

P L D 2022 Supreme Court 675
Present: Syed Mansoor Ali Shah, J
QAUSAIN FAISAL---Appellant

Versus

FEDERATION OF PAKISTAN through Secretary, Ministry of Interior and others---Respondents

C. M. Appeal No. 87 of 2022 in Const. Petition No. Nil of 2022, decided on 18th July, 2022.

(Against the order dated 06.07.2022 of the Registrar, declining to register the Constitution Petition of the Appellant).

Supreme Court Rules, 1980---

---O.III, R. 10(a), O. V, R.1(6) & O.VII, R. 7---Constitution of Pakistan, Art. 184(3)---Constitutional petition under Article 184(3) filed before the Supreme Court---Maintainability, question of---Registrar (Supreme Court), powers of---No provision in the Supreme Court Rules, 1980 empowered the Registrar to touch upon the maintainability of a constitutional petition filed under Article 184(3) of the Constitution, other than ensuring its proper form and presentation as per the practice and procedure of the Court provided in the Rules---Maintainability and the merits of a petition were justiciable issues, and fell within the domain of the Court.

Under the Supreme Court Rules, 1980 ('the Rules'), the Registrar of the Supreme Court is to perform certain functions that are mostly administrative and ministerial in nature. In performing the administrative function of "registration of petitions, appeals, suits and other matters" under Rule 1(6) of Order V of the Rules, the Registrar has been conferred: (i) the power under Rule 10(a) of Order III "to require any plaint, petition of appeal, petition for leave to appeal or other matters" presented to the Court, to be amended in accordance with the practice and procedure of the Court, and (ii) the power under Rule 7 of Order VII to "decline to receive any document" which is presented otherwise than in accordance with the Rules. The powers of the Registrar under Rule 10 of Order III along with Rule 7 of Order VII of the Rules are purely administrative in character, which allow him to enforce the practice and procedure of the Court in relation to presentation of cases and ensure that the form of the pleadings and the documents filed therewith is as per the Rules. The justiciability of the legal and factual questions raised in the petitions is a matter for the Court to deal with and decide upon. Registrar enjoying administrative powers under the Rules cannot assume the core adjudicatory role of the Court under the Constitution. There is no provision in the Rules that empowers the Registrar to touch upon the maintainability of a petition, other than ensuring its proper form and presentation as per the practice and procedure of the Court provided in the Rules. The maintainability and the merits of a petition are justiciable issues, and fall within the domain of the Court.

Farman Ali v. Muhammad Ishaq PLD 2013 SC 392 and P. Surendran v. State 2019 SCC Online SC 507 ref.

Certain miscellaneous matters, that are also essentially procedural in character, regarding which the Registrar can exercise the powers of the Court are listed in Rule 1 of Order V of the Rules, but the matters listed there (sub-rules 1 to 31) do not authorize the Registrar to decide upon the maintainability of a constitution petition filed under Article 184(3) of the Constitution. Objections raised by the Registrar, which touch upon the questions of maintainability and merits of the case, can only be examined by the Court through a judicial determination and not by the Registrar or a Judge hearing an appeal-in-chambers, against the order of the Registrar, on the administrative side.

Hassan Raza Pasha, Advocate Supreme Court for Appellant.

Nemo for Respondents.

Date of hearing: 18th July, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---Through this appeal under Order V, Rule 3 of the Supreme Court Rules, 1980 ("Rules"), the appellant has challenged the order of the Registrar of this Court, dated 06.7.2022, whereby the constitution petition filed by the appellant under Article 184(3) of the Constitution of the Islamic Republic

of Pakistan, 1973 ("Constitution") has not been entertained and registered by the Registrar on the following grounds:

- a. That the petitioner is invoking the extraordinary jurisdiction of the Supreme Court under Article 184(3) of the Constitution for the redressal of an individual grievance, which is not permissible in terms of judgment reported as 1998 SCMR 793 titled as "Zulfiqar Mehdi v. PIA, etc."
- b. That notice issued to the respondent is not properly drawn as it is neither mentioned therein that for what purpose this Constitution Petition is being filed before this Court nor copy of petition has been provided to the respondent.
- c. That the petitioner has not pointed out as to what questions of public importance in the instant case are involved with reference to enforcement of any of the Fundamental Rights guaranteed under the Constitution, so as to directly invoke jurisdiction of the Supreme Court under Article 184(3) of the Constitution.
- d. That the petitioner has not approached any other appropriate forum available under the law for the same relief and has also not provided any justification for not doing so.
- e. That ingredients for invoking extra ordinary jurisdiction of this Court under Article 184(3) of the Constitution have not been satisfied.

- f. That the certificate provided at page 32 of this Constitution Petition does not fulfill the requirements of Rule 6 of Order XXV of the Supreme Court Rules, 1980. Moreover, the same contains over writing/cuttings.

2. I have heard the learned counsel for the appellant and have carefully examined the impugned order and the Rules. Under the Rules, the Registrar is to perform certain functions that are mostly administrative and ministerial in nature. In performing the administrative function of "registration of petitions, appeals, suits and other matters" under Rule 1(6) of Order V of the Rules, the Registrar has been conferred: (i) the power under Rule 10(a) of Order III "to require any plaint, petition of appeal, petition for leave to appeal or other matters" presented to the Court, to be amended in accordance with the practice and procedure of the Court, and (ii) the power under Rule 7 of Order VII to "decline to receive any document" which is presented otherwise than in accordance with the Rules. It is in exercise of these powers that the Registrar has made the impugned order. The powers of the Registrar under Rule 10 of Order III along with Rule 7 of Order VII of the Rules are purely administrative in character, which allow him to enforce the practice and procedure of the Court in relation to presentation of cases and ensure that the form of the pleadings and the documents filed therewith is as per the Rules. The justiciability of the legal and factual questions raised in the petitions is a matter for the Court to deal with and decide upon. Registrar enjoying administrative powers under the Rules cannot assume the core adjudicatory role of the Court under the Constitution of the Islamic Republic of Pakistan, 1973. There is no provision in the Rules that empowers the Registrar to touch upon the maintainability of a petition, other than ensuring its proper form and presentation as per the practice and procedure of the Court provided in the Rules. The maintainability and the merits of a petition are justiciable issues, and fall within the domain of the Court.¹

3. Certain miscellaneous matters, that are also essentially procedural in character, regarding which the Registrar can exercise the powers of the Court are listed in Rule 1 of Order V of the Rules, but the matters listed there (sub-rules (1) to (31)) do not authorize the Registrar to decide upon the maintainability of a constitution petition filed under Article 184(3) of the Constitution. Therefore, grounds/objections (a), (c), (d) and (e) of the impugned order of the Registrar, which touch upon the questions of maintainability and merits of the case, can only be examined by the Court through a judicial determination and not by the Registrar or a Judge hearing an appeal-in-chambers, like the present one against the order of the Registrar, on the administrative side. Such an exercise of power by the Registrar falls outside his domain under the Rules. Grounds (a), (c), (d) and (e) of the impugned Order of the Registrar are, therefore, overruled. They may be determined by the Court on the judicial side. As far as grounds (b) and (f) are concerned, they fall within the administrative powers exercised by the Registrar and are found justified, therefore sustained. The appellant shall meet these objections, to the satisfaction of the Registrar, within two weeks. Once the needful is done, the office shall register the constitution petition of the appellant and fix it before an appropriate Bench on the judicial side. The appeal is partly allowed in these terms. MWA/Q-2/SC Order accordingly.