

Present: Syed Mansoor Ali Shah and Aqeel Ahmed Abbasi, JJ

In the matter regarding non fixation of the case, CPLA 836-K of 2020, etc.

Crl. O. P. No.1 of 2025, decided on 22nd January, 2025.

Supreme Court (Practice and Procedure) Act (XVII of 2023)---

---S. 2---Constitution of Pakistan, Arts. 5, 190, 191A & 204---Contempt proceedings---Non-fixation of case--
-Executive and judicial order---Officer of Supreme Court fixed case in question before Constitutional Bench of
Supreme Court on the basis of order passed by Committee of Supreme Court constituted under section 2 of
Supreme Court (Practice and Procedure) Act, 2023, against the order passed by Bench of Supreme Court during
Court proceedings---Validity---All Executive and Judicial authorities throughout Pakistan, including officers
within the establishment of Supreme Court, are required under Article 190 of the Constitution to act in aid of
Supreme Court, meaning in aid of its judicial orders, not administrative orders---Every citizen, including
officers within the establishment of Supreme Court, are bound under Article 5 of the Constitution to obey the
Constitution and law---Supreme Court issued notices to Attorney General to conduct contempt proceedings
against officer of Supreme Court, as well as to assist Supreme Court on questions of law---Proceedings
adjourned.

Malik Asad Ali v. Federation of Pakistan 1998 SCMR 15; 1998 SCMR 130; Human Rights Case No. 14959-K
of 2018(PLD 2019 SC 183; Muhammad Sajid v. Imran Khan W.P. No. 3061 of 2022; Nusrat Bhutto v. Chief
of the Army Staff PLD 1977 SC 657; Syed Zafar Ali Shah v. General Pervez Musharaf PLD 2000 SC 869; CJP
Iftikhar Muhammad Chaudhry v. President of Pakistan PLD 2010 SC 61; Justice Qazi Faez Isa v. President of
Pakistan 2019 SCMR 1875; and Malik Asad Ali v. Federation of Pakistan PLD 1998 SC 161 ref.

In attendance:

Muhammad Salim Khan, Registrar, SCP.

Zulifqar Ahmed, D.R. (Judl.), SCP.

Aamir Rehman, Addl. A.G.P.

Salahuddin Ahmed, Advocate Supreme Court.

Shahid Jamil Khan, Advocate Supreme Court.

Hamid Khan, Senior Advocate Supreme Court.

Date of hearing: 21st January, 2025.

ORDER

In response to the notice issued to the Additional Registrar (Judicial) of this Court, requiring an explanation as to why the cases (C.P.L.A. No. 836- K of 2020, etc.) were not fixed on 20.01.2025 in compliance with the court order dated 16.01.2025 and to show cause why contempt proceedings should not be initiated against him for such non-compliance of the court order, Mr. Muhammad Salim Khan, the Registrar of this Court, has appeared on behalf of the Additional Registrar (Judicial), Mr. Nazar Abbas, who is reported to be indisposed.

2. The Registrar has presented copies of two decisions made by two different Committees: first, the decision of the Committee constituted under Section 2 of the Supreme Court (Practice and Procedure) Act, 2023 ("Act"); and second, the decision of the Committee constituted under Article 191A of the Constitution of the Islamic Republic of Pakistan ("Constitution"). He stated that the Committee constituted under Section 2 of the Act convened its meeting on 17.01.2025 and, by a majority decision, decided to "withdraw" the said cases from the regular Bench and refer them to the Committee established under Article 191A of the Constitution. Subsequently, the latter Committee convened its meeting on the same date, i.e., 17.01.2025, and directed that all cases challenging the vires of the 26th Constitutional Amendment be fixed for hearing before the Constitutional Bench on 27.01.2025. He explained that, because of these decisions of the two Committees, the aforementioned cases were not be fixed by the office for hearing on 20.01.2025 before the regular Bench.

3. Mr. Salahuddin Ahmed, counsel for the respondents (C.P.L.A. 836-K/2022), has submitted that the vires of the 26th Constitutional Amendment were not challenged in the cases being heard by the regular Bench; rather, the issue under consideration was limited solely to the jurisdictional bar of regular Benches under Article 191A of the Constitution. Therefore, it appears that the said cases do not fall within the purview of the decision

rendered by the Committee established under Article 191A of the Constitution. Even otherwise, he submitted, the Committee established under Article 191A of the Constitution is required to pass a speaking order to determine whether the matter should be placed before the Constitutional Bench or a regular Bench as required under Section 2A of the Act. He has further submitted that there are two preliminary issues involved in the proceedings. First, the explanation advanced by the Registrar is that the case was not fixed before this Court due to the decisions of the Committees constituted under Section 2 of the Act and under Article 191A of the Constitution, both dated 17.01.2025. Therefore, the legal validity of the explanation of the Registrar must be examined and determined by the Court. Second, whether the decisions of the Committees taken on the administrative side cannot undo the effect of a judicial order. In support of this contention, learned counsel relied upon *Malik Asad Ali v. Federation of Pakistan* (1998 SCMR 15, 1998 SCMR 130, PLD 1998 SC 161) and Human Rights Case No. 14959-K of 2018 (PLD 2019 SC 183). Additionally, he cited the unreported order dated 21.05.2024 passed by the Islamabad High Court, Islamabad, in W.P. No. 3061/2022, titled *Muhammad Sajid v. Imran Khan*. He also placed reliance on *Nusrat Bhutto v. Chief of the Army Staff* (PLD 1977 SC 657), *Syed Zafar Ali Shah v. General Pervez Musharraf* (PLD 2000 SC 869), and *CJP Iftikhar Muhammad Chaudhry v. President of Pakistan* (PLD 2010 SC 61) to contend that the judicial powers of this Court cannot be taken away through administrative orders. Lastly, learned counsel submitted that the issue at hand affects the judicial powers of all judges of this Court. Therefore, propriety demands that this matter be placed before the Full Court. In support of this contention, learned counsel referred to *Justice Qazi Faez Isa v. President of Pakistan* (2019 SCMR 1875), *CJP Iftikhar Muhammad Chaudhry v. President of Pakistan* (PLD 2010 SC 61) and *Malik Asad Ali v. Federation of Pakistan* (PLD 1998 SC 161).

4. The above contentions of the learned counsel have given rise to the following substantial questions of law of public importance:

- (i) whether the Committees constituted under Section 2 of the Act and Article 191A of the Constitution have the authority to withdraw a case in which cognisance has already been taken by a regular bench and serious questions of constitutional law relating to the jurisdiction of the regular Bench have been framed; and
- (ii) whether the said Committees can, by an administrative order, undo the effect of a judicial order, whereby next date of hearing a specific case has been fixed before a regular Bench.

Under Article 190 of the Constitution, all executive and judicial authorities throughout Pakistan, including officers within the establishment of this Court, are required to act in aid of the Supreme Court, meaning in aid of its judicial orders, not administrative orders. Furthermore, in accordance with the constitutional mandate of Article 5 of the Constitution, every citizen, including officers within the establishment of this Court, is bound to obey the Constitution and the law. Accordingly, the legality of the explanation put forth by the Registrar, as well as the outcome of the present contempt proceedings, hinges upon the determination of the aforementioned questions.

5. In light of the significance of the questions involved, we hereby appoint Mr. Hamid Khan, Sr. ASC, and Mr. Muneer A. Malik, Sr. ASC, as amici curiae to assist the Court in addressing the aforementioned questions. Further, Mr. Shahid Jamil Khan, ASC, has also sought permission to assist the Court in the matter. As he represents one of the respondents in the main cases, his request is granted. Notice is also issued to learned Attorney General for Pakistan to conduct these proceedings as well as assist the Court on the above questions.

6. The hearing is adjourned to tomorrow, i.e., 22.01.2025, for arguments on the above questions.

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah

Mr. Justice Aqeel Ahmed Abbasi

CrI.O. P. No.1/2025

(In the matter regarding non fixation of the case, CPLA 836-K of 2020, etc.)

In attendance: Mr. Mansoor Usman Awan, A.G.P.

Mr. Hamid Khan, Sr. Advocate Supreme Court.

Mr. M. Waqar Rana, Advocate Supreme Court.

Mr. Salah ud Din, Advocate Supreme Court.

Mr. Shahid Jamil Khan, Advocate Supreme Court.

Mr. Nazar Abbas, Addl. Reg. (J), SCP.

Mr. Zulfiqar Ahmed, D.R.(J), SCP.

Mr. Munir A. Malik, Sr. Advocate Supreme Court

(via video link, Karachi)

Date of hearing: 22.01.2025.

ORDER

Mr. Nazar Abbas (accused person) has tendered appearance and seeks time to file his written statement. Let the needful be done by tomorrow i.e. 23.01.2025. It is clarified that on 21.01.2025 the Registrar of the Court had tendered appearance on behalf of Mr. Nazar Abbas and submitted on his behalf that the case was not fixed on 20.01.2025 because of the two decisions of the Committees

constituted under Section 2 of the Supreme Court (Practice and Procedure) Act, 2023 (the "2023 Act") and Article 191(A) (4) of the Constitution. Hence the defence presented by the Registrar on behalf of the Additional Registrar were the two Committees decisions dated 17.01.2025.

2. The learned Attorney General for Pakistan has pointed out that the amicus curiae appointed by this Court yesterday are already counsel in cases challenging the 26th Constitutional Amendment before the Constitutional Bench. Be that as it may, the question before us is the scope of Section 2 of the 2023 Act and does not directly relate to the 26th Constitutional Amendment. Even otherwise, we have asked the learned A.G.P. to suggest other names for appointing as amicus curiae, who are not associated with the challenge laid against the 26th Constitutional Amendment. He remained reluctant to suggest a name. We, therefore, appoint Mr. Ahsan Bhoon, learned ASC, and Khawaja Haris Ahmad, learned ASC as amici curiae in addition to the amici already appointed. Office is directed to intimate them so that can make it convenient to appear in person or through video link before the Court tomorrow.

3. Mr. Shahid Jamil Khan, learned ASC, representing respondents in the main case tendered appearance and requested to assist the Court on the question framed by the Court vide order dated 21.01.2025. He referred to Articles 204(c) and 175(2) of the Constitution to submit that the jurisdiction under Article 187 (Complete Justice) is also available to the Bench and hence the decisions of the Committee can be examined by the Bench. He submits that the administrative order cannot override a judicial order and to the extent of inconsistency the administrative order is void and non est. He has placed reliance on para-43 of case reported as Malik Asad Ali and others v. Federation of Pakistan through Secretary, Law, Justice and Parliament Affairs, Islamabad and others (PLD 1998 SC 161), Human Right case in the matter regarding disposal of infectious wastes in the Province of Khyber Pakhtunkhwa (PLD 2019 SC 183) and Muhammad Imtiyaz v. Ch. Muhammad Naeem and others (PLD 2023 SC 306). Walking us through the Supreme Court (Practice and Procedure) Act, 2023, the learned counsel read Sections 2 and 2A and submitted that all the cases pending in the Supreme Court must first be taken-up by the original Committee under Section 2 of the 2023 Act and if the question arises before that Committee whether a case ought to be heard by the Constitutional Bench or the Regular Bench it ought to be referred to the Committee constituted under Article 191A of the Constitution under Section 2A. In the end he submits that the question as to how the Benches are to be regulated is a matter of some serious concern and therefore ought to be heard by a Full Court of this Court.

4. Mr. Munir A. Malik, learned counsel has tendered appearance as amicus curiae. He submits that two fundamental questions arise in this case: (i). that all the cases pending in the Supreme Court are to be first examined by the Committee constituted under Section 2 the 2023 Act and only if a question arises that the matter ought to be sent to the Committee constituted under Article 191A(4) of the Constitution (Section 2A of the Supreme Court (Practice and Procedure) Act, 2023), can the case be sent to the said Committee. (ii). that judicial order cannot be trumped by an administrative order because that directly affects the independence of the judiciary. He added that a case being heard by a Bench cannot be withdrawn through an administrative order. He submits that these questions are of fundamental importance and go to the root of the independence of

the judiciary and submits that it ought to be heard by a Full Court of this Court so that the matter is settled once and for all. When asked whether such an order can be passed in contempt proceedings, he submits it can be as in the present case the very defence presented by the accused person is that the case was not fixed before the Court because of the decisions of the two Committees dated 17.01.2025.

5. Mr. Hamid Khan, learned counsel has tendered appearance as amicus curiae and has referred to para-4 of the order passed by this Court on 21.01.2025. He read out the two questions of public importance framed in the said paragraph. Rephrasing the two questions he submits; i). whether a judicial order and its implementation can be undone or varied by a Committee exercising administrative and procedural powers of the Court; and ii). whether a constitutional question coming-up before a Bench of the Court could be decided by it or referred to a Full Court for its determination. He then referred to Articles 175 and 176 of the Constitution to submit that the Supreme Court has been constituted under Article 175 and its constitution has been described under Article 176 of the Constitution. Both these Articles read together do not envisage any divisibility within the Supreme Court regarding the exercise of judicial power. The learned amicus was on his legs when the Court had to rise for today. To come-up tomorrow i.e. 23.01.2025.

MH/I-1/SC Order accordingly.