P L D 2003 Supreme Court 74

Present: Sh. Riaz Ahmed, C.J., Munir A. Sheikh, Nazim Hussain Siddiqui, Iftikhar Muhammad Chaudhry and Qazi Muhammad Farooq, JJ

WATAN PARTY through Punjab President Ladies Wing Tasneem Shaukat Khan---Petitioner

Versus

CHIEF EXECUTIVE/PRESIDENT OF PAKISTAN, and another---Respondents

Constitutional Petition No.36 of 2002, decided on 7th October, 2002.

(a) Legal Framework Order (24 of 2002)---

-----Art. 3 & Sched.---Constitution of Pakistan (1973), Arts. 184(3) & 239--Consitutitional petition before the Supreme Court under Art. 184(3) of the Constitution---Contentions of the petitioner, inter alia, were that the amendments made in the Constitution of Pakistan (1973) through the Schedule to the Legal Framework Order, 2002 be set aside on the ground of being illegal and unconstitutional and that the Legal Framework Order, 2002 violated the judgment of Supreme Court in Syed Zafar Ali Shah PLD 2000 SC 869---Validity---Held, Supreme Court in Syed Zafar Ali Shah's case PLD 2000 SC 869 had validated the extra Constitutional step on the touchstone of the Doctrine of State Necessity and the principle of salus populi est suprema lex and had come to the conclusion that sufficient corroborative and confirmatory material existed to justify the intervention by the Armed Forces through extra-Constitutional treasure---Supreme Court, while validating. the extra-Constitutional step declared that the Constitution of Pakistan (1973), remained the supreme law of the land subject to the condition that certain parts thereof had been held in abeyance on account of the State Necessity and General Parvez Musharraf, Chief of Army Staff/Chairman, Joint Chiefs of Staff Committee, described as Chief Executive, was entitled to perform all such acts and promulgate all legislative measures namely "all acts and legislative measures, which were in accordance with or could have been made under the Constitution of Pakistan (1973) including the power to amend it"; restriction was, however, placed upon the power to amend the Constitution to the effect that it could be resorted to only if the Constitution failed to provide a solution for attainment of the declared objectives of the Chief Executive and the power was controlled by the criteria that "all acts which tend to advance the good of people, all acts required to be done for, the ordinary orderly running of the State and all such measures as would establish or would lead to the establishment of the declared objectives of the Chief Executive" ---Procedure to amend the Constitution as enshrined in Art.239, Part XI of the Constitution remained unaltered and the Parliament retained the same power to amend the Constitution as it had before the promulgation of the Legal Framework Order, 2002---Parliament and not the Supreme Court was the appropriate forum to consider all these amendments by the Legal Framework Order, 2002---Constitutional petition was dismissed in circumstances.

Syed Zafar Ali Shah v. General Pervez Musharraf PLD 2000 SC 869; Begum Nusrat Bhutto's case PLD 1977 SC 657 and Mahmood Khan Achakzai v. Federation of Pakistan PLD 1997 SC 426 ref.

(b) Legal Framework Order (24 of 2002)---

----Art. 3 & Sched.---Constitution of Pakistan (1973), Art.183(4)-- Constitutional petition before the Supreme Court under Art.184(3) of the Constitution ---Vires of

Legal Framework Order, 2002---Locus standi and bona fides of the petitioner to invoke the jurisdiction of the Supreme Court under Art. 184(3) of the Constitution---Question of public importance-- Concept---Question raised before the Supreme Court in a petition under Art. 184(3) of the Constitution must be one of public importance with reference to the enforcement of Fundamental Rights contained in Chap. 1, Part II of the Constitution and the person desiring to invoke the jurisdiction of Supreme Court under Art. 184(3) of the Constitution need not necessarily be an aggrieved person, nevertheless the person approaching Supreme Court under Art. 184(3) had to demonstrate that the question raised concerned the public at large---Principles.

The question raised before the Supreme Court under Article 184(3) of the Constitution must be one of public importance with reference to the enforcement of Fundamental Rights contained in Chapter 1, Part II of the Constitution. The person desiring to invoke the jurisdiction of Supreme Court under Article 184(3) of the Constitution need not necessarily be an aggrieved person, nevertheless the person approaching Supreme Court under the aforesaid provision has to demonstrate that the question raised concerns the public at large.

The issues arising in a case, cannot be considered as a question of public importance if the decision of the issues affects only the rights of an individual or a group of individuals. The issue in, order to assume the character of public importance, must be such that its decision affects the rights and liberties of people at large. The adjective "public" necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole. Therefore, if a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance.

Manzoor Elahi v. Federation of Pakistan PLD 1975 SC 66: Miss Benazir Bhutto's case PLD 1988 SC 416; Asad Ali's case PLD 1998 SC 161 and Zulfqar Mehdi v. Pakistan International Airlines Corporation 1998 SCMR 793 ref.

Zafarullah Khan, Advocate Supreme Court and Tanvir Ahmed, Advocate-on-Record (absent) for Petitioner.

Makhdoom Ali Khan, Attorney-General for Pakistan assisted by Dr. Danishwar Malik, Deputy Attorney-General for Pakistan and M.S. Khattak, Advocate-on-Record (on Court's Notice).

Syed Sharifuddin Pirzada. Senior Advocate Supreme Court and Mehr Khan Malik, Advocate-on-Record for the Federation.

Date of haring: 7th October, 2002.

ORDER

SH. RIAZ AHMED, C.J.--The present petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973, seeks to set aside the amendments trade in the Constitution of Pakistan through the Schedule to the Legal Framework Order, 2002 on the ground of being illegal and unconstitutional.

2. Mr. Zafarullah Khan, learned Advocate Supreme Court, .in support of the petition. raised the following contentions:--

> (i) The Legal Framework Order violates the judgment of this Court in Syed Zafar Ali Shah's case (PLD 2000 SC 869) wherein it has been unequivocally laid down that "no amendment shall be made in the salient features of the Constitution, i.e. independence of judiciary, federalism, parliamentary form of

Government blended with Islamic provisions". Only limited power to amend the Constitution had been conferred by this Court upon the Chief Executive but the Chief Executive has introduced as many as 29 amendments in just one go through the Legal Framework Order.

(ii) Amendment of the Constitution all over the world is not a simple task. The Constitution of Pakistan can only be amended with a two -third majority of the members of both the Houses of Parliament. In Australia and Japan, the Constitution can be amended with absolute majority followed by a popular referendum. In some countries, the amendment of the Constitution takes effect after the Party proposing it is out of power and the amendment is also passed/ratified by the next Party in power.

(iii) The Legal Framework Order defies the principle of division of labour/trichotomy of powers envisaged by the Constitution of Pakistan.

(iv) The Legal Framework Order by investing vast powers in the President in the name of checks and balances has done away with the parliamentary form of government and has put in place presidential form of government.

(v) There are no checks and balances on the President of Pakistan under the amended Constitution and he is not answerable to anyone. Under the new set-up somebody would be ruling but someone else would be answerable.

(vi) The position of an elected President is entirely different vis-a-vis the present President inasmuch as the former is elected by a certain party but the present incumbent neither represents any party, nor is a member of any party and is not responsible to anybody.

(vii) The 13th and 14th Amendments were enforced under the parliamentary system whereas the Legal Framework Order has been introduced by an institution, which does not have the mandate for the job.

(viii) Article 58(2)(b) of the Constitution envisages a subjective test and the assessment by the authority exercising the power is whimsical. With Article 58(2)(b) of the Constitution on the statute book, no government completed its tenure and the money spent on holding of five general elections in just 12 years could well have been invested in social welfare sectors such as education, health, etc.

(ix) Appointment of a Governor under Article 101 'not on the advice of but 'in consultation with' the Prime Minister and the empowerment of the Governor under Article 112 on the line of Article 58(2)(b) militate against the concept of federalism inasmuch as they adversely affect the provincial autonomy, a cornerstone of the parliamentary system; and

(x) The National Security Council in the backdrop of the above factors deals the final blow on the parliamentary system of government given its composition, which includes five uniformed members plus the opposition leader and the Chief Ministers on whom would continue to hang the Sword of Damocles in the shape of Governor's power to dissolve the Assembly in his discretion. The Prime Minister would be reduced to a non-entity.

3. We have heard the learned counsel for the petitioner as well as the learned Attorney-General for Pakistan and Syed Sharifuddin Pirzada, Senior Advocate Supreme Court, representing Federation of Pakistan.

4. We need not recapitulate the details but we may briefly mention here that on the 12th of October, 1999 General Pervez Musharraf. Chief of Army Staff took over the reins of the country by dismissing the Government of Mian Nawaz Sharif, the then Prime Minister of Pakistan and also the provincial governments in all the provinces. On the 14th of October. 1999 General Pervez Musharraf issued the Proclamation of Emergency effective from the 12th of October, 1999 whereby the Constitution of the Islamic Republic of Pakistan was held in abeyance and the whole of Pakistan was brought under the control of the Armed Forces. The Proclamation of Emergency was followed by the Provisional Constitution Order No. 1 of 1999 as amended. Seven Constitution petitions were filed by various persons in this Court under Article 184(3) of the Constitution assailing the extra- Constitutional step of taking over the affairs of Pakistan by the Armed Forces of Pakistan and the Chief of Army Staff General Pervez Musharraf. All these petitions were decided on 12th of May, 2000 vide judgment reported as Syed Zafar Ali Shah v. General Pervez Musharraf (PLD 2000 SC 869). Needless to repeat, this Court vide the aforesaid judgment validated the extra-Constitutional step on the touchstone of the doctrine of state necessity and the principle of salus populi est suprema lex as embodied in Begum Nusrat Bhutto's case (PLD 1977 SC 657). This Court came to the conclusion that sufficient corroborative and confirmatory material existed to justify the intervention by the Armed Forces through extra-Constitutional measure. While validating the extra-Constitutional step this Court held that the 1973 Constitution remains the supreme law of the land subject to the condition that certain parts thereof have been held in abeyance on account of the state necessity. It was further held that General Pervez Musharraf, Chief of Army Staff/Chairman, Joint Chiefs of Staff Committee, described as Chief Executive is entitled to perform all such acts and promulgate all legislative measures as enumerated below, namely:--

> (a) "All acts and legislative measures, which are in accordance with or could have been made under the 1973 Constitution, including the power to amend it. "

However, this Court placed restrictions upon the power to amend the Constitution and laid down that it can be resorted to only if the Constitution fails to provide a solution for attainment of the declared objectives of the Chief Executive and the power was controlled by the following criteria:--

> (b) All acts which tend to advance the good of the people.
>
> (c) All acts required to be done for the ordinary orderly running of the State: and
>
> (d) All such measures as would establish or would lead to the establishment of the declared objectives of the Chief Executive.

To conclude in brief, this Court held that having regard to all the relevant factors. a period of three years was allowed to the Chief Executive with effect from the date of the Army takeover i.e. the 12th of October, 1999 for achieving his declared objectives. It was further held that the Chief Executive shall appoint a date not later than 90 days before the expiry of the period of three years for holding general election to the National and the Provincial Assemblies and the Senate of Pakistan. By way of passing remarks, we may refer to the subsequent events after the judgment was delivered by this Court in Syed Zafar Ali Shah's case. The Chief Executive decided to take over the office of the President of Pakistan and then a referendum was held. In compliance with the judgment of this Court in Syed Zafar Ali Shah's case, it was announced that the general election in the country would be held on the 10th October, 2002, i.e. before the expiry of three years allowed by this Court to the Chief Executive for restoration of democracy and for holding of elections in the country.

5. The Chief Executive established various institutions to help and guide him and keeping in view the rising population of the country and particularly the political culture, certain packages containing Constitutional amendments were announced and through lengthy debates the opinion of the public, intellectuals, was solicited and as a result thereof finally-the Legal Framework Order, 2002 was promulgated. This Order revived Article 58(2)(b) of the Constitution, which was incorporated in the Constitution in 1985 through the well-known 8th Amendment of the Constitution. Article 58(2)(b) of the Constitution conferred powers on the President to dissolve the National Assembly if the government was not being run in accordance with the Constitution and appeal to the electorate was necessary. This power was resorted to four times in this country; firstly by General Ziaul Haq dissolving the National Assembly and dismissing the government of Mr. Muhammad Khan Junejo, secondly. by Mr. Ghulam Ishaq Khan while dissolving the National Assembly and dismissing the government of Mohtarama Benazir Bhutto in 1990 and thirdly again by Mr. Ghulam Ishaq Khan while dissolving the National Assembly and dismissing the government of Mian Nawaz Sharif. Although the dismissal of the government of Mian Nawaz Sharif in 1993 was declared by this Court to be un-Constitutional but subsequently both the President and the Prime Minister had to resign and as a result of the general election held in 1993, Mohtarama Benazir Bhutto formed the government. Her second government was also dismissed and the National Assembly dissolved in 1996 by Sardar Farooq Khan Leghari, the then President of Pakistan. Consequently, fresh elections were held and Mian Nawaz Sharif for the second time formed the government and became the Prime Minister. Article 58(2)(b) was got repealed by Mian Nawaz Sharif through the 13th Amendment of the Constitution. At this juncture, it would be necessary to refer to the validity of the 8th Amendment and Article 58(2)(b) of the Constitution; which was debated in this Court in Mahmood Khan Achakzai v. Federation of Pakistan PLD 1997 SC 426). While referring to Article 58(2)(b) and its utility in the background of the political culture of this country, this Court made the following illuminating observations:---

> "57. Much has been said against Article 58(2)(b) of the Constitution that it has changed the shape of the Constitution from Parliamentary to Presidential and has concentrated powers in the hands of the President who is not directly elected as is Prime Minister. Perusal of the Constitution, as it is, shows that it is not so and the apprehension is unfounded for the reason that this provision has only brought about balance between the powers of the President and the Prime Minister in Parliamentary Form of Government as is contemplated under Parliamentary Democracy. There is nothing unusual about it and such provisions enabling the President to exercise such power can be found in various Parliamentary and Democratic Constitutions like Australia, Italy, India, France and Portugal. In fact Article 58(2)(b) has shut the door on Martial Law for ever, which has not visited as after 1977."

We can only wish that the then legislators and Mian Nawaz Sharif at the helm of affairs had realized the implications of such repeal. Article 58(2)(b) was described as a safety valve against imposition of martial law/military takeover.

6. Adverting to the Legal Framework Order, as discussed above, Article 58(2)(b) has now been reincorporated in the Constitution. Mr. Zafarullah Khan, learned Advocate Supreme Court for the petitioner criticized such incorporation and we drew his attention to the observations made by this Court in Mahmood Khan Achakzai's case and also apprised him of the grave consequences of the repeated military takeovers: However, we are constrained to judge the maintainability of this petition under Article 184(3) of the Constitution filed by Watan Party. We confronted the learned counsel with this aspect of the case and the learned counsel submitted that Watan Party had filed this petition through the Punjab President of the Ladies Wing, namely, Tasneem Shaukat Khan. We have noted the following paragraph in the body of the petition:--

"That the petitioner's party has boycotted the general elections, which are undemocratic."

Admittedly, no list of members or office-bearers at the national, provincial or local levels has been filed. There is nothing on record to indicate that the party has ever had any representation in the Parliament or in any Provincial Assembly. It was also admitted that the patty had not held the infra-party election mandated by the Political Parties Order, 2002 (Chief Executive's Order No. 18 of 2002). We asked the learned counsel to name the office-bearers of the party in Balochistan but the learned counsel could not give any definite name. In this background, the crucial question seeking an answer is the locus standi and bona fides of the petitioner to invoke the jurisdiction of this Court under Article 184(3) of the Constitution. In our view, answer to this question is in negative as the petitioner has no locus standi to file this petition. Although as held in Manzoor Elahi v. Federation of Pakistan (PLD 1975 SC 66) the question raised before the Court under Article 184(3) must be one of public importance with reference to the enforcement of Fundamental Rights contained in Chapter 1, Part II of the Constitution. It is true that as held in Benazir Bhutto's case (PLD 1988 SC 416) and Asad Ali's case (PLD 1998 SC 161) the person desiring to invoke the jurisdiction of this Court under Article 184(3) of the Constitution need not necessarily be an aggrieved person, nevertheless the person approaching this Court under the aforesaid provision has to demonstrate that the question raised concerns the public at large. It may be appropriate to reproduce observations of this Court in Zulfiqar Mehdi v. Pakistan International Airlines Corporation (1998 SCMR 793), which run as under:--

"The issues arising in a case, cannot be considered as a question of public importance, if the decision of the issues affects only the rights of an individual or a group of individuals. The issue in order to assume the character of public importance, must be such that its decision affects the rights and liberties of people at large. The adjective 'public' necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole. Therefore, if a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance. "

7. It is worthwhile to mention that all the major political parties have fielded their candidates to contest the General Election 2002 under the Conduct of General Elections Order, 2002 (Chief Executive's Order No. 7 of 2002) and none of them has come forward with a petition to question any provision of the Legal Framework Order. It is well-known now that after the election the National and the Provincial Assemblies will meet. The members will elect Speakers, Deputy Speakers, Prime Minister, Chief Ministers and the Senators. The elected Parliament is in immediate sight and obviously the Parliament and not this Court is the appropriate forum to consider all these amendments. We may further observe that procedure to amend the Constitution as enshrined in Article 239, Part XI remains unaltered. The Parliament retains same power to amend the Constitution as it did before the promulgation of the Legal Framework Order.

8. The upshot of the above discussion is that this petition must be dismissed because the petitioner has no locus standi to invoke the jurisdiction) of this Court under Article 184(3) of the Constitution.

(Sd.)
SH. RIAZ AHMED, C.J.

(Sd.)
MUNIR A. SHEIKH, J.

(Sd.)

NAZIM HUSSAIN SIDDIQUI, J.

(Sd.)

IFTIKHAR MUHAMMAD CHAUDHRY, J.

(Sd.)

QAZI MUHAMMAD FAROOQ, J.

M.B.A./W-39/S Petition dismissed.

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