IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

ORDER SHEET

Civil Misc. Appeals No. 44 to 46 of 2022
IN
Constitution Petitions NIL/2022

C.M. Appeal No. 44/22
Zulfiqar Ahmed Bhutta. ...*Appellant*

Versus

The Federation of Pakistan through Secretary
Law and Justice Division, Islamabad. ...*Respondents*

PRAYER:

[*That CM Appeal may be accepted and matter may urgently be placed before the Honorable Bench*]

C.M. Appeal No. 45/22
Syed Tariq Badar. ...*Appellant*

Versus

Federation of Pakistan through Prime Minister,
Islamabad and others. ...*Respondents*

PRAYER:

[*That the instant Civil Miscellaneous Appeal may kindly be accepted and the order dated 02.04.2022 may graciously be set aside and the above titled Constitution Petition be entertained and be fixed in the Court for hearing in the interest of justice*]

C.M. Appeal No. 46/22
Naeem ul Hassan, Advocate. ...*Appellant*

Versus

Federation of Pakistan through Cabinet Secretary,
Islamabad and others. ...*Respondents*

PRAYER:

[*That by accepting this appeal, the impugned order, dated 02.04.2022 passed by the Assistant Registrar (Civil-II) of this Court, as communicated vide Const. P. No. NIL/2022 dated 02.0402022 may graciously be set aside and by overruling the office objections, the Constitutional Petition may kindly be ordered to be entertained and placed before this Honourable Court for decision on merits in the interest of justice*]

Protected with free version of Watermarkly. Full version doesn't put this mark.

Attendance:

For the Appellant: Mr. Zulfiqar Ahmed Bhutta, ASC (In-person)
(In CMA. 44/22)

For the Appellant: Dr. G. M. Chaudhry, ASC.
(In CMA. 45/22) Syed Rifaqat Hussain Shah, AOR.

For the Appellant: Mr. Naeem-ul-Hassan, Advocate (In-person)
(In CMA. 46/22)

For the Respondents: Not represented.
(In all CMAs)

Date of Hearing	Order of Chief Justice/Judge.
22.02.2023	Three Constitution Petitions were filed by two lawyers who are petitioners, namely, Mr. Zulfiqar Ahmed Bhutta and Mr. Naeem ul Hassan and one by Syed Tariq Badar under Article 184(3) of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**'). The petitions sought that an inquiry be conducted by this Court in respect of a cypher sent by an Ambassador of Pakistan to the Federal Government. However, the office did not number these petitions because, as per office objections, they did not fulfill the stipulated criteria of Article 184(3) of the Constitution and did not meet other related provisions of the Supreme Court Rules, 1980. It is against the said office objections that these three civil miscellaneous appeals ('**the appeals**') have been filed, which were earlier placed before my learned brother Mr. Justice Sardar Tariq Masood but he regretted hearing them. Accordingly, the Honourable Chief Justice has marked these appeals to me for hearing, and I proceeded to hear them. 2. For ease of reference Article 184(3) of the Constitution is reproduced hereunder: '(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of

Protected with free version of Watermarkly. Full version doesn't put this mark.

	the nature mentioned in the said Article.' 3. Mr. Zulfiqar Ahmed Bhutta has argued his own appeal, the learned Dr. G. M. Chaudhry that of Syed Tariq Badar and Mr. Naeem ul Hassan has also argued his own appeal. The appellants and the learned counsel state that the said petitions came within the purview of Article 184(3) of the Constitution. Therefore, they were asked to state which Fundamental Right was sought to be enforced, and they said it was Article 9 of the Constitution. Article 9 of the Constitution states that '*no person shall be deprived of life or liberty save as in accordance with law*'. However, it is not even alleged that the public's *life or liberty* has been affected, nor that of the appellants, nor can one envisage it. Mr. Zulfiqar Ahmed Bhutta, ASC also refers to Articles 4 and 5 of the Constitution, but these articles have no relevance to the instant matter. 4. Article 175(2) of the Constitution provides that '*no court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law*'. Therefore, it was enquired whether any law has conferred jurisdiction on this Court which can be invoked to order an inquiry with regard to the said cypher. The learned Dr. G. M. Chaudhry has referred to the Pakistan Commissions of Inquiry Act, 2017 ('**the Act**') and states that an inquiry should have been conducted pursuant to the Act in respect of the said cypher which the former Prime Minister had mentioned in his public speeches. He was asked who has been authorized to exercise powers under the Act and the learned counsel states that it is the Federal Government. Since the Act itself prescribes who can order an inquiry then it is for that authority to do so, and this Court will not assume such jurisdiction. The learned counsel then stated that the former Prime Minister was empowered under the Act to initiate an

Protected with free version of Watermarkly. Full version doesn't put this mark.

inquiry but did not do so, therefore, this Court should do so now. However, if this Court were to resort to the Act in initiating an inquiry, it would not only contravene the Act but will also be assuming the executive power of the Federal Government.

5. The executive authority of the Federal Government is attended to by Chapter III of Part III of the Constitution which in its Article 97 stipulates that, *the executive authority of the Federation shall extend to the matters with respect to which the Parliament has powers to make laws ...* . The said laws are those mentioned in the Federal Legislative List (Fourth Schedule to the Constitution) which also mentions *external affairs* at number 3 of the said List. Therefore, the matter exclusively vested in the Federal Government. However, the then Prime Minister in his discretion elected not to exercise powers under the Act to order an inquiry. The Court cannot assume the executive powers vesting in the Federal Government.

6. It will also not be out of place to refer to Article 175(3) of the Constitution which mandates the separation of the Judiciary from the Executive. Needless to state that neither should encroach upon the domain of the other.

7. The appellants and the learned counsel have not been able to persuade me to allow the appeals. The objections raised by the office are sustained, and consequently these appeals are dismissed.

Qazi Faez Isa,
Judge

KISMAT KHAN

Protected with free version of Watermarkly. Full version doesn't put this mark.