IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:
Justice Qazi Faez Isa, CJ
Justice Amin-ud-Din Khan
Justice Jamal Khan Mandokhail
Justice Syed Hasan Azhar Rizvi
Justice Irfan Saadat Khan

1. **Constitution Petition No. 76 of 2018**

Shaukat Aziz Siddiqui. ... *Petitioner*

Versus

Federation of Pakistan, Secretary Ministry of Law and Justice and another. ... *Respondents*

And

2. **Constitution Petition No. 15 of 2020**

Islamabad Bar Association through its General Secretary. ... *Petitioner*

Versus

Federation of Pakistan, Secretary Ministry of Law and Justice and others. ... *Respondents*

And

3. **Constitution Petition No. 2 of 2021**

Karachi Bar Association through its President and another. ... *Petitioners*

Versus

Federation of Pakistan, Secretary Ministry of Law and Justice and others. ... *Respondents*

For the Petitioner: *(in CP.76/2018)* — Mr. Hamid Khan, Sr. ASC.
Mr. Ajmal Ghaffar Toor, ASC.
a/w the petitioner.

For the Petitioner: *(in CP.15/20 & CP.2/21)* — Mr. Salahuddin Ahmed, ASC *(Through video-link from Karachi)* alongwith Ch.Hafeezullah Yaqoob, ASC and Mr. Muhammad Amir Malik, AOR.

For the Respondents: *(in CP.76/2018)* — Kh. Haris Ahmed, Sr.ASC for respondent Nos.3 & 4 in Const.P.No.76/2018.
Mr. Wasim Sajjad, Sr.ASC for respondent No. 5 in Const.P.No.76/2018.
Mr. Arbab Muhammad Arif, in person.

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For the Federation: Mr. Mansoor Usman Awan, Attorney-General for Pakistan assisted by Malik Javed Iqbal Weins, Additional Attorney-General.
a/w Mir Aurangzeb, AOR and Mr. Nazakat Ali Bhand, Assistant Solicitor, Ministry of Law and Justice.

Dates of Hearing: 14.12.2023, 15.12.2023 and 23.01.2024.

JUDGMENT

Qazi Faez Isa, CJ. Justice Shaukat Aziz Siddiqui ('**Justice Siddiqui**') was the senior puisne judge of the Islamabad High Court when he was sent a show cause notice dated 31 July 2018 by the Supreme Judicial Council ('**SJC**'), under the Supreme Judicial Council (Procedure of Enquiry) 2005 ('**the Procedure**'). The show cause notice stated that he may have committed misconduct within the meaning of clauses (5)(b) and (6) of Article 209 of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**'). The relevant portion of the show cause notice issued to Justice Siddiqui is reproduced hereunder:

> '1. You while addressing District Bar Association, Rawalpindi on 21.07.2018 have leveled the following serious allegations pertaining to Superior Judiciary and a state institution:-
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> i) That ISI is fully involved in manipulation of judicial proceedings including marking of cases to Hon. Benches.
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> ii) That ISI personnel approached Chief Justice Islamabad High Court and asked him not to let Mr. Nawaz Sharif and his daughter come out of prison before General Elections 2018 and not to include your lordship in the Bench; and that Chief Justice Islamabad High Court responded that the Bench will be constituted as per their desire.
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> iii) That your lordship claimed to even have knowledge of the person who conveys messages to the Supreme Court.
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> iv) That daily proceedings of Accountability Court were being reported somewhere, and that your lordship also knows the reason why the administrative control of Islamabad High Court as per statute was removed, so that no Judge could look into the proceedings.
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> v) That your lordship was asked to give assurance that your lordship would give decision as per their request, and then references pending against your lordship would be closed.

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vi) That if your lordship decided cases according to their desire, your lordship would be made Chief Justice Islamabad High Court by September 2018.

2. Upon presentation of the transcript of your speech Hon. Chief Justice of Pakistan had been pleased to observe that the allegations leveled in the speech had cast aspersions and maligned the superior judiciary of the country, and berated its independence. It also implicates some other national institutions. The Hon. Chief Justice of the Islamabad High Court was asked to comment upon the veracity of the allegations leveled against him. He was also asked to obtain from your lordship the material/evidence available (if any) to be immediately transmitted to the office of Chief Justice of Pakistan for consideration and appropriate action if necessary. In response Hon. Chief Justice of the Islamabad High Court offered his comments vide letter dated 29.7.2018, wherein his lordship responded that vide letter dated 24.7.2018 your lordship was requested for provision of material/evidence but no reply has been received from your lordship. Regarding allegations leveled against Hon. Chief Justice of the Islamabad High Court, his lordship has categorically denied all the allegations.

3. The above act on your part amounts to misconduct as envisaged in the provisions inter-alia of Articles II, III, V & IX of the Code of Conduct prescribed by the Supreme Judicial Council.'

2. Prior to the issuance of the show cause notice the Registrar of the Supreme Court, who acted as the Secretary of the SJC, had submitted a note dated 23 July 2018 to the Chairman of the SJC, which is reproduced hereunder:

'On 21.07.2018 Hon'ble Mr. Justice Siddiqui addressed District Bar Association Rawalpindi. During the speech he stated that Judiciary was mainly responsible for the atmosphere of coercion and fear that prevailed in Pakistan. In addition he accused the ISI of approaching Chief Justice of Islamabad High Court regarding fixation of cases and exclusion of Justice Shaukat Aziz Siddiqui from certain Benches. Furthermore he stated that he had knowledge of the person through whom messages are conveyed to the Supreme Court of Pakistan. Copy of the transcript is placed at F/A. The speech has tended to accuse a sensitive state agency of manipulation of judicial processes which may result is erosion of public confidence in the Superior Judiciary. The matter is put up for your consideration and appropriate orders.

Submitted please.'

3. As soon as the above note was submitted to the Chairman he, on the very same day that is 23 July 2018, wrote as under:

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> 'The note put up by the Registrar and the transcript of the speech delivered by Mr. Justice Shaukat Aziz Siddiqui has been perused. The allegations leveled in the speech cast aspersions and malign the superior judiciary of the country and berate its independence. It also implicates some other national institutions. The Hon'ble Chief Justice of the Islamabad High Court, Islamabad may comment upon the veracity of the allegations leveled against him. He may also obtain from Mr. Justice Shaukat Aziz Siddiqui the material/evidence available with him (if any) to substantiate the allegations leveled in the speech. Such material/evidence (if any) and the comments of the Hon'ble Chief Justice may immediately be transmitted to the office of the undersigned in sealed cover for consideration and appropriate action, if necessary.'

4. The Chief Justice of the Islamabad High Court responded on 29 July 2018 and stated that he had written to Justice Siddiqui on 24 July 2018 '*for provision of material/evidence available with him but no reply has so far been received*.' The Chief Justice of the Islamabad High Court denied the allegations which Justice Siddiqui had levelled against him.

5. The Secretary of the SJC on 30 July 2018 submitted another note to the Chairman of the SJC, which is reproduced hereunder:

> 'A note had been submitted to Hon. Chief Justice regarding Hon. Mr. Justice Shaukat Aziz Siddiqui's address to District Bar Association, Rawalpindi on 21.07.2018. Text of the speech is enclosed in which inter-alia following allegations have been leveled:
>
> i) ISI is fully involved in manipulation of judicial proceedings including marking of cases to Hon. Benches.
>
> ii) He alleges that ISI personnel approached Chief Justice Islamabad High Court and asked him not to let Mr. Nawaz Sharif and his daughter come out of prison before General Elections and not to include Mr. Justice Shaukat Aziz Siddiqui in the Bench. Chief Justice Islamabad High Court responded that the Bench will be constituted as per their desire.
>
> iii) He alleges that he even has the knowledge of the person who conveys messages to the Supreme Court.
>
> iv) He alleges that daily proceedings of Accountability Court were being reported somewhere. He further alleges that he also knows the reason why the administrative control of Islamabad High Court as per statute was removed, so that no Judge could look into the proceedings.

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v) He alleges that he was asked to give assurance that he would give decision as per their request, and then references pending against him would be closed.

vi) He alleges that if he decided cases according to their desire, he would be made Chief Justice Islamabad High Court by September.

2. Hon. Chief Justice of Pakistan/Chairman SJC had called for the response of Chief Justice of Islamabad High Court which has been received and placed on the file. He was also asked to procure evidence/material from Mr. Justice Shaukat Aziz Siddiqui but that has not been provided so far.

3. Submitted please.'

6. On the very day that the Chairman received the above note, that is 30 July 2018, he sought the opinion of Justice Asif Saeed Khan Khosa ('**Justice Khosa**') *in terms of clause 7(1)(a)* of the Procedure with regard to Justice Siddiqui, and on the same day (30 July 2018), Justice Khosa rendered the following opinion:

'The speech made by the Hon'ble Judge ostensibly offends against Articles II, III, V and IX of the Code of Conduct. I am, therefore, of the opinion that the matter requires an inquiry by the Supreme Judicial Council.'

Again on the same day (30 July 2018) the Chairman of the SJC directed to '*Fix before the SJC in the meeting on 31/7/18 at 2.00 P.M.*' the matter pertaining to Justice Siddiqui. On 31 July 2018 the SJC passed the following order:

'MIAN SAQIB NISAR, CHAIRMAN.- After having examined the record and also the opinion of our brother Hon'ble Mr. Justice Asif Saeed Khan Khosa and upon thoroughly discussing the matter while taking into consideration the material mentioned above we are inclined to issue a show cause notice to the respondent-Judge and send the relevant material to him calling upon him to explain his conduct within a period of 14 days from today. Let the matter be listed on **28.8.2018** for consideration of the reply of the respondent-Judge.'

7. The show cause notice dated 31 July 2018 was sent to Justice Siddiqui who submitted a *Preliminary Reply* on 15 August 2018 and followed it by an *Added Reply* on 27 August 2018. Justice Siddiqui did not deny having addressed the District Bar Association, Rawalpindi nor contested the correctness of the transcript of his speech, which was provided to him with the show cause notice. The SJC considered the two replies submitted by Justice Siddiqui to the show cause notice and on 14

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September 2018 '*decided to further proceed with the matter*'. The SJC also directed that notice be issued to the Attorney-General for Pakistan '*for conducting the reference'*. The learned Mr. Anwar Mansoor Khan was then the Attorney-General for Pakistan and conducted the reference. On 1 October 2018 the SJC passed the following order:

> 'MIAN SAQIB NISAR, CHAIRMAN.- The contents of the transcript of the respondent-Judge's speech have been put to him and his learned counsel, both of whom admit the correctness thereof. The specific portions of the speech which may tantamount to misconduct were threadbarely discussed with the learned counsel who has been given ample opportunity to provide an explanation and respond thereto. We have also heard the learned Attorney General for Pakistan. After a thorough consideration of the contents of the speech and the written replies of the respondent-Judge to the show cause notice, the matter is adjourned to 8.10.2018 for further deliberations.'

And, on 8 October 2018 the SJC issued the following order:

> 'MIAN SAQIB NISAR, CHAIRMAN.- After due and extensive deliberations the opinion has been formed by the Council, for the finalization of the report. To come up on 11.10.2018.
>
> C.M.A.No.5/2018:
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> 2. In view of the opinion so formed, this application of the respondent-Judge for holding open trial in the matter is dismissed.'

8. Justice Siddiqui was provided one hearing (on 1 October 2018) by the SJC. The SJC's '*REPORT under Article 209(6) of the Constitution'* is dated 11 October 2018, comprises of 39 pages and it is authored by Justice Khosa; the Chairman (Chief Justice Mian Saqib Nisar) and the other Members of the SJC (Justice Gulzar Ahmed, Judge of the Supreme Court, Justice Ahmed Ali M. Shaikh, Chief Justice, High Court of Sindh, and Justice Muhammad Yawar Ali, Chief Justice, Lahore High Court) concurred with it. The *Report* concluded by stating that '*Justice Siddiqui had not only violated some express provisions of the Code of Conduct but he had also displayed conduct unbecoming of a Judge and had violated the traditional requirements of behavior expected of a Judge of the superior Court.*' The SJC rendered the following opinion:

'OPINION

> 'This Council is unanimously of the opinion that in the matter of making his speech before the District Bar Association,

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> Rawalpindi on 21.07.2018 Mr. Justice Shaukat Aziz Siddiqui, Judge, Islamabad High Court, Islamabad had displayed conduct unbecoming of a Judge and was, thus, guilty of misconduct and he is, therefore, liable to be removed from his office under Article 209(6) of the Constitution of the Islamic Republic of Pakistan, 1973.'[1]

9. The Report/Opinion of the SJC was submitted to the President of Pakistan[2] who apparently was advised by the Prime Minister[3] and his Cabinet of Ministers and the Government of Pakistan through Secretary, Ministry of Law and Justice issued Notification[4] which removed Justice Siddiqui *from his office with immediate effect*.

10. Justice Siddiqui had filed this Constitution Petition on 26 October 2018 under Article 184(3) of the Constitution, but it was not numbered because of the objections raised by the office of this Court. Justice Siddiqui challenged the objections by filing a civil miscellaneous appeal (CMA No. 140/2018), which was allowed by this Court *vide* order dated 25 March 2019 and it was ordered that his petition be numbered, which was numbered as Constitution Petition No. 76/2018. The Islamabad Bar Association and the Karachi Bar Association also filed constitution petitions, respectively bearing numbers 15 of 2020 and 2 of 2021, which supported Justice Siddiqui's petition and objected to his removal without first holding an inquiry. Learned counsel Mr. Salahuddin Ahmed represented the two bar associations.

11. The matter was listed for hearing before a five-Member Bench headed by Justice Umar Ata Bandial on 9 December 2020, 28 January 2021, 31 May 2021, 2 June 2021, 8 June 2021, 10 June 2021, 11 June 2021, 6 December 2021, 7 December 2021, 14 December 2021, 10 March 2022, 15 March 2022 and 13 June 2022, when it was ordered that they will be treated as '*partly heard*' and should be listed '*for further hearing on 14.06.2022 at 12.30 pm*.' However, the petitions were not listed for hearing on 14 June 2022, and for the next year and a half. The petitions eventually came up for hearing before the present Bench on 14 December 2023, when it was noted that:

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[1] PLD 2018 Journal 67.
[2] Dr. Arif Alvi.
[3] Mr. Imran Ahmed Khan Niazi.
[4] No. F.9(2)/2018-A.II. dated 11 October 2018.

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> 'Earlier these petitions were heard by a five-Member Bench but three members of the Bench have retired, and the remaining two Members did not want to continue to be part of the Bench, therefore, this Bench was constituted.'

12. The question of the maintainability of these petitions was raised because Article 211 of the Constitution stipulates that '*removal of a Judge under clause (6) of Article 209 shall not be called in question in Court*'. Learned senior counsel Mr. Hamid Khan and learned Mr. Salahuddin Ahmed submitted that in similar cases the Supreme Court had held that the bar contained in Article 211 does not protect acts which are *mala fide* or *coram non judice* or *were acts taken without jurisdiction*, and in such circumstances the Supreme Court has exercised jurisdiction. In this regard reference was made to the cases of *Justice Shaukat Siddiqui v President of Pakistan*,[5] *Justice Qazi Faez Isa v President of Pakistan*[6] and *Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry v The President of Pakistan*,[7] where it was held that:

> '102. Having thus looked into the question of jurisdiction of this Court vis-à-vis the Supreme Judicial Council, I would conclude as under:-
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> a) that the Supreme Judicial Council which comprises of the Chief Justice of Pakistan (except when the reference be against him) and two most senior Honourable Judges of this Court and two most senior Honourable Chief Justices of the High Courts, is a forum entitled to the highest of respect;
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> b) that the said Council, however, can not be conceded the status of a court;
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> c) that the ouster clause of Article 211 of the Constitution would not protect acts which were mala fide or coram non judice or were acts taken without jurisdiction;
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> d) that in situations of extraordinary nature, the S.J.C. would be amenable to the jurisdiction of this Court under Article 184 of the Constitution; and e) that the principle of comity among Judges of the Superior Courts is only a rule of propriety and could never be considered an impediment in the way of providing justice to an aggrieved person.'

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[5] PLD 2018 Supreme Court 538.
[6] PLD 2021 Supreme Court 1.
[7] PLD 2010 Supreme Court 61.

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13. The United States Supreme Court has defined *coram non judice*. In the *Dynes v Hoover*[8] it held that:

> 'It is only where a court has no jurisdiction over the subject-matter, or, having such jurisdiction, is bound to adopt certain rules in its proceedings, from which it deviates, whereby the proceedings are rendered *coram non judice*, that an action will lie against the officer who executes its judgment.'

In *Dred Scott v Sanford*[9] the United States Supreme Court held that any action taken beyond what the Constitution and laws have authorized would be *coram non judice*:

> 'But as this court is one of limited and special original jurisdiction, its action must be confined to the particular cases, controversies and parties, over which the Constitution and laws have authorized it to act; any proceeding without the limits prescribed is *coram non judice* and its action a nullity. And whether the want or excess of power is objected by a party, or is apparent to the court, it must surcease its action or proceed extra-judicially.'

And, in *Burham v Superior Court of California*[10] stated that *coram non judice* was a long standing principle of common law and that absence of *lawful judicial authority* invalidates judgments:

> "The proposition that the judgment of a court lacking jurisdiction is void traces back to the English Year Books, see Bowser v. Collins, Y.B.Mich. 22 Edw. IV, f. 30, pl. 11, 145 Eng.Rep. 97 (Ex. Ch. 1482), and was made settled law by Lord Coke in Case of the Marshalsea, 10 Coke Rep. 68b, 77a, 77 Eng.Rep. 1027, 1041 (K.B. 1612). Traditionally that proposition was embodied in the phrase *coram non judice*, "before a person not a judge"—meaning, in effect, that the proceeding in question was not a judicial proceeding because lawful judicial authority was not present, and could therefore not yield a judgment. American courts invalidated, or denied recognition to, judgments that violated this common-law principle long before the Fourteenth Amendment was adopted.'

14. We also need to consider the bar of jurisdiction in precedents of this Court. In *Abdul Rauf v Abdul Hamid Khan*[11] a five-member Bench held, that:

> '... any provision in an enactment saying that orders passed under the enactment or by virtue of the powers conferred by the enactment would not be liable to challenge in a Court of

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[8] 61 U.S. 65 (1857).
[9] 60 U.S. 393 (1857).
[10] 495 U.S. 604 (1990).
[11] PLD 1965 Supreme Court 671, p. 675.

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> law has reference only to orders passed with jurisdiction. It can be stated as a general rule, without reference to the language used in an enactment, that barring provisions like those with which we are here concerned apply only to orders passed with jurisdiction.'

The *Abdul Rauf* case had also held that if action which has been taken is *mala fide* then too the bar of jurisdiction would not be applicable, by stating as under:

> 'The decision of the question whether the Civil Court had jurisdiction in the present case would depend on whether the impugned orders and proceedings were without jurisdiction. There is in this case an attack on the proceeding on the ground of *mala fide* too. A *mala fide* act is by its nature an act without jurisdiction. No Legislature when it grants power to take action or pass an order contemplates a *mala fide* exercise of power. A *mala fide* order is a fraud on the statute. It may be explained that a *mala fide* order means one which is passed not for the purpose contemplated by the enactment granting the power to pass the order, but for some other collateral or ulterior purposes.'

And, if action is taken contrary to the specified manner or in circumstances not provided for it would also be construed as *mala fide* as held by a four-member Bench in the case of *Federation of Pakistan v Saeed Ahmed*: [12]

> 'Action taken in colourable exercise of powers, that is to say, for collateral purposes not authorized by the law are also *mala fide* ... the taking of action in such a case for purposes not so specified or in circumstances not provided for by the law would amount to colourable exercise of power or a fraud upon the law.'

15. Article 209(5) of the Constitution requires that the SJC has to '*inquire into the matter*' with regard to whether a judge is guilty of misconduct. Article 209(6) commences by stating that, '*if after inquiring into the matter*', and concludes by stating that, if the SJC is of the opinion that a Judge has been guilty of misconduct he should be removed from office. However, Article 209(7) of the Constitution simultaneously safeguards the tenure of a Judge by stipulating that, '*A judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article*,' including clauses (5) and (6), which require that an inquiry has to be conducted by the SJC before determining whether a Judge is guilty of misconduct. Article 195 of the Constitution renders further protection to a Judge by stating

[12] PLD 1974 Supreme Court 266, pp. 170-171.

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that a Judge cannot be removed from office except '*in accordance with the Constitution*', and the Constitution does not permit the removal of a Judge from office without first holding an inquiry with regard to any alleged misconduct.

16. Therefore, it needs consideration whether an inquiry was conducted with regard to Justice Siddiqui. The SJC in its Report/Opinion stated that, '*the Council* [SJC] *formed a view that the issue before it was not as to whether the allegations leveled by Justice Siddiqui in his speech ... were correct or not but the question before the Council was whether a senior serving Judge of a High Court ought to have leveled such allegations at a public forum or not*'. The SJC proceeded on the assumption that the truth or falseness of the allegations levelled by Justice Siddiqui was irrelevant. However, the SJC proceeded to opine that Justice Siddiqui had failed to substantiate, independently corroborate, substantiate or prove the allegations levelled by him, as noted in the following extracts from the Report/Opinion:

(1) 'There is no independent confirmation available regarding the facts asserted by Justice Siddiqui...'. (paragraph 17(iii), page 23)

(2) '... Justice Siddiqui had completely failed to substantiate his allegations...'. (paragraph 17(iv), page 24)

(3) 'That allegation had, thus, remained a bald allegation *sans* any proof whatsoever.' (paragraph 17(iv), page 24)

(4) '... raising suspicions about transparency and fairness of the relevant trial and had not bothered to substantiate the allegations.' (paragraph 17(vii), page 28)

The abovementioned *relevant trial* was that of the former Prime Minister, Mr. Muhammad Nawaz Sharif, and of his daughter, Ms. Maryam Nawaz.

(5) '... Justice Siddiqui had gone public with such newfound but totally unsubstantiated information.' (paragraph 17(ix), page 30)

(6) 'The stated allurement [to be made Chief Justice of the Islamabad High Court and before time] was allegedly provided to Justice Siddiqui in a meeting regarding which there was no independent proof.' (paragraph 17(ix), page 30)

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(7) '... there is no independent confirmation available regarding the facts asserted by Justice Siddiqui even in respect of his stated meetings with some officials or operatives of ISI and in respect of the conversations statedly taking place during such meetings.' (paragraph 17(x), page 31)

(8) '... about his stated meetings and conversations with some officials or operatives of ISI, for which there is no independent confirmation...'. (paragraph 18, page 33)

(9) '... he had levelled allegations of exerting of undue influence upon him by some officials and operatives of an intelligence agency without substantiating the said allegations...'. (paragraph 22, page 36)

(10) '... it was alleged by him that the entire judicial process was manipulated by an intelligence agency but he could not substantiate that allegation...'. (paragraph 22, page 36)

(11) '... he had also alleged that the media in the country had succumbed to extraneous pressure. By leveling all such allegations publicly without substantiating the same...'. (paragraph 22, page 37)

17. Justice Siddiqui had undoubtedly levelled very serious allegations against General Faiz Hameed, who was then serving in the Inter Services Intelligence ('**ISI**'), and a few of his subordinates in the ISI who he accused of manipulation of certain sensitive cases in the Islamabad High Court and in the Accountability Court, which was under the jurisdiction of the Islamabad High Court. However, Justice Siddiqui was not given an opportunity to establish his allegations nor brought face to face with those he had accused. When we noted this lapse we issued notices to all those against whom he made allegations and provided them with an opportunity to admit/deny them. All of them have denied their stated involvement. Therefore, it was all the more necessary for the SJC to have inquired into the matter and to have determined who was telling the truth. The SJC did not give any credence to Justice Siddiqui's own words and to the contents of his replies; the SJC assumed that they were false; and having made this assumption concluded that Justice Siddiqui was guilty of misconduct. It would be difficult to categorize such a determination as fair or one which accorded with the requirements of due process. Justice Siddiqui was not

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given an opportunity to establish the veracity of his allegations, which was incumbent on the SJC when the same formed the basis of Justice Siddiqui's removal from office. The Fundamental Rights enshrined in the Constitution include the right to a *fair trial and due process* (Article 10A) and all citizens, including Judges, must be dealt with in accordance therewith. However, Justice Siddiqui was deprived of his Fundamental Rights of fair trial and due process. Article 209 does not stipulate that in determining whether a Judge is guilty of misconduct he is denuded of the Fundamental Rights nor permits the SJC to act contrarily to them.

18. In all prior cases when proceedings were initiated against Judges which resulted in their removal from office it was done after the recording of evidence. Evidence was recorded in the case of Justice Akhlaque Hussain[13] before rendering the opinion that he should be removed from his office. In the case of Justice Shaukat Ali[14] the SJC recorded evidence of witnesses before formulating its opinion and recommending his removal. And, in the recent case of Mr. Mazahar Ali Akbar Naqvi[15] the SJC recorded the testimony of 14 witnesses, who produced a number of documents, opportunity to cross-examine the witnesses was granted, and only then did the SJC find that Mr. Mazahar Ali Akbar Naqvi was guilty of misconduct and should have been removed as a Judge of the Supreme Court.

19. In *Ghulam Muhammad Khan v Prime Minister of Pakistan*[16] this Court held, that:

> 'The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact could not be recorded without examining the witnesses in support of the charge or charges, the regular inquiry cannot be dispensed with.'

20. The SJC had dispensed with the holding an inquiry but did not do so for any compelling or justifiable reason and did so by negating Justice Siddiqui's Fundamental Right to a fair trial and due process. In *Senior Superintendent of Police v Shahid Nazir*[17] this Court had stipulated that only in exceptional cases can an inquiry be dispensed with:

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[13] *State v Mr. Justice Akhlaque Hussain*, PLD 1960 Supreme Court 26.
[14] *The President v Mr. Justice Shaukat Ali*, PLD 1971 Supreme Court 585.
[15] https://www.supremecourt.gov.pk/downloads_judgements/complaint_586_2023_sjc_04032024.pdf
[16] 1996 SCMR 802, p. 806.
[17] 2022 SCMR 326, p. 332.

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> '8. There is no hard and fast rule that in each and every case after issuing show cause notice the regular inquiry should be conducted but if the department wants to dispense with the regular inquiry there must be some compelling and justiciable reasons assigned in writing.'

Without the holding of an inquiry the punishment awarded to Justice Siddiqui of removing him from office could not be imposed. In *Nawab Khan v Government of Pakistan*[18] a five-member Bench of this Court held:

> '... if findings of fact are recorded without recording any evidence, the same will be based on surmises and conjectures, which will have no evidentiary value as to warrant imposition of any punishment...'.

21. In not holding an inquiry, by not providing Justice Siddiqui an opportunity to establish his allegations and without recording of evidence it cannot be stated that Justice Siddiqui had received a fair trial and that due process requirements were met. He was also not dealt with in accordance with law, as prescribed by Article 4 of the Constitution, and in particular action detrimental to him, including his reputation, was taken. This Court had dilated upon Article 4 of the Constitution in *Government of Pakistan v Farheen Rashid*[19] as under:

> '10. It is the inalienable right of every citizen to be treated in accordance with law as envisaged by Article 4 of the Constitution. It is the duty and obligation of the public functionaries to act within the four corners of the mandate of the Constitution and Law.'
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> 'The word law used in the Constitution has been interpreted to include all such principles as having the binding force on account of moral, customary or other sociological reasons. Late Hamood-ur-Rehman, J., defined the word law while interpreting Article 4 of the Constitution and the dictum laid down in Begum Agha Abdul Karim Shorish Kashmiri's case PLD 1969 SC 14 as under:
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> > "Law is here not confined to statute law alone but is used in its generic sense as connoting all that is treated as law in this country including even the judicial principles laid down from time to time by the superior Courts."'

22. There are two essential aspects to this case; the independence of the Judiciary and its freedom to decide cases without fear or favour is one, and

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[18] PLD 1994 Supreme Court 222, p. 229C.
[19] 2011 SCMR 1, p. 7.

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the accountability of Judges is the other. These two aspects were attended to in the *Shaukat Aziz Siddiqui* case, as under:

> '45. There can be no escape from the obvious fact that access to justice is a Fundamental Right of the people of Pakistan guaranteed under the Constitution. There can be no concept of access to justice without an Independent Judiciary. The jurisprudence, both nationally and internationally which has evolved over the ages, around the concept of Independence of the Judiciary recognizes that the security of tenure of Judges is a critical pre-condition for such independence. This is a universally accepted principle and has also been laid down by a larger Bench of this Court in the case reported as *Chief Justice of Pakistan Iftikhar Muhammad Chaudhry (supra)* in the following terms:
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> > "60. I would, therefore, conclude and hold that access to justice was a Fundamental Right which the Constitution had guaranteed to the people; that the existence of an independent and vibrant judiciary was indispensable and crucial for the enjoyment of the said constitutional assurance and in the absence thereof, this right would be a mere illusion; that without security to the Judges of the Superior Courts vis-à-vis, inter alia, their service and the tenure thereof, ..." '
>
> '46. Historically, the Fundamental Rights of the people require protection from the excess of the Executive and the Vested Interest, both commercial and political. In order to safeguard the Fundamental Rights of the people guaranteed under the Constitution, the Independence of Judiciary obviously must be insulated from the onslaught of the Executive and such vested Interests, who are past masters at Institutional Capture. Thus, the security of tenure of Judges more so those of the Superior Courts is imperative and, therefore, adequate safeguards in this behalf are provided including by enacting what appears to be a rather cumbersome and strict process for their removal. This cardinal principle is reflected in the Constitutional dispensation of almost all Democratic countries peopled by citizens and not subjects. The exceptions, in this behalf, are almost always found in countries either under Military Dictatorships or ruled by Fascist regimes. The said safeguard is reflected in our Constitution under Article 209. It is no coincidence that each and every time a Military Dictatorship is imposed in Pakistan and a Constitutional "deviation" occurs an essential feature of the new dispersion is the promulgation of some Pseudo Legal Instrument enabling the removal of Judges by the Executive without the necessity of resorting to the provisions of Article 209 of the Constitution.'[20]

[20] *Shaukat Aziz Siddiqui v Federation of Pakistan*, PLD 2018 Supreme Court 538, para 45 and 46, pp. 555-556.

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> '49. However, it does not mean that those falling within the ambit of Article 209 of the Constitution are sacred cows beyond the pale of accountability. If a person looses or abandons the necessary attributes of a Judge of integrity, probity, legal expertise and mental balance then he is not entitled to any security of tenure and must be weeded out post-haste with surgical precision through due process in terms of Article 209 of the Constitution. Such removal is necessary to preserve the Independence of Judiciary. Accountability strengthens rather than weakens institutions.'[21]

23. The Constitution guarantees that a Judge's tenure is secure because it makes for an independent Judiciary while enabling a Judge to be removed from office if he commits misconduct, after providing him a fair trial and due process, as mandated by Article 10A of the Constitution. However, Justice Siddiqui was not provided with an opportunity to establish the truth of the allegations he levelled, but was punished for leveling them.

24. In view of the above noted transgressions the bar of jurisdiction contained in Article 211 of the Constitution would not be applicable in the instant case since the action, as it was taken, against Justice Siddiqui constituted *mala fide* and the SJC had acted *coram non judice*. If a Judge can be removed without even inquiring into the allegations levelled by or against the Judge the independence of the Judiciary receives a severe setback. The removal of a Judge is undoubtedly a matter of public importance and of public interest. And, an independent Judiciary is the foundation on which all the Fundamental Rights enshrined in the Constitution[22] rest. Without an independent Judiciary Fundamental Rights are jeopardized. Resultantly, we have no hesitation in holding that these petitions were maintainable under Article 184(3) of the Constitution.

25. Having found that the bar of jurisdiction is not applicable in the instant case and these petitions are maintainable under Article 184(3) of the Constitution we proceed to consider the merits of the case and the SJC's Report/Opinion. The Report/Opinion states that in '*making his speech before the District Bar Asociation, Rawalpindi on 21.07.2018 Justice Siddiqui had not only violated some express provisions of the Code of Conduct but he had also displayed conduct unbecoming of a Judge and had*

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[21] *Ibid.*, para 49, pp. 556-557.
[22] Constitution of the Islamic Republic of Pakistan, Chapter 1 of Part II.

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violated the traditional requirements of behavior expected of a Judge of a superior Court.' However, the provisions of the Code of Conduct which Justice Siddiqui is stated to have violated were not mentioned. Paragraph 22 of the SJC's Report/Opinion refers to Articles II, III, V and IX of the Code of Conduct, which are respectively reproduced hereunder:

> Article-II
>
> 'A Judge should be God-fearing, law-abiding, abstemious, truthful of tongue, wise in opinion, cautious and forbearing, blameless, and untouched by greed. While dispensing justice, he should be strong without being rough, polite without being weak, awe inspires in his warnings and faithful to his word, always preserving calmness, balance and complete detachment, for the formation of correct conclusions in all matters coming before him.
>
> In the matter of taking his seat and of rising from his seat, he shall be punctilious in point of time, mindful of the courtesies, careful to preserve the dignity of the Court, while maintaining an equal aspect towards all litigants as well as lawyers appearing before him.'
>
> Article-III
>
> 'To be above reproach, and for this purpose to keep his conduct in all things, official and private, free from impropriety is expected of a Judge.'
>
> Article-V
>
> 'Functioning as he does in full view of the public, a Judge gets thereby all the publicity that is good for him. He should not seek more. In particular, he should not engage in any public controversy, least of all on a political question, notwithstanding that it involves a question of law.'
>
> Article-IX
>
> 'In his judicial work, and his relations with other Judges, a Judge should act always for the maintenance of harmony within his own Court, as well as among all Courts and for the integrity of the institution of justice. Disagreement with the opinion of any Judge, whether of equal or of inferior status, should invariably be expressed in terms of courtesy and restraint.'

The SJC did not specify which particular provision or aspect of the said four Articles of the Code of Conduct, or of any other, Justice Siddiqui had violated and had persuaded the SJC to opine that he was guilty of misconduct.

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26. Justice Siddiqui had leveled serious allegations and these were noted in the impugned Report/Opinion which included that the then Major General Faiz Hameed, DG-C of ISI, and some of his subordinates had wanted cases '*pertaining to Faizabad sit-in, BOL Media Group, AXACT*' and those of Mr. Muhammad Nawaz Sharif, former Prime Minister of Pakistan, and his daughter, Ms. Maryam Nawaz Sharif, to be decided in a particular manner. If the SJC after conducting an inquiry had determined that Justice Siddiqui had levelled false allegations he would have been guilty of misconduct, but without inquiring into the matter it could not be said that he had levelled false allegations. Justice Siddiqui had also implicated the Chief Justice of the Islamabad High Court with regard to which the SJC opined that '*if mere words of mouth of Justice Siddiqui were to be accepted as correct regarding such a factual allegation because he is a Judge of a High Court then through the same logic the written letter of the Chief Justice of the same court denying or contradicting allegations are to carry more weight and credibility.*' The approach adopted by the SJC, with respect, was not correct. It cannot be assumed that a person in a senior position would be telling the truth while one junior to him would not. The SJC had to inquire into the matter, and all the more so in view of its gravity. In his replies to the show cause notice Justice Siddiqui maintained that what he had said to the District Bar Association was correct and in his replies had made further allegations against powerful people. In these circumstances, at the very least Justice Siddiqui should have been asked to testify on oath and provided an opportunity to support his allegations, but this was not done. And those against whom the allegations were levelled should have been provided an opportunity to cross-examine him and also be provided an opportunity to testify and rebut the allegations. Article 210 of the Constitution empowers the SJC to order *the attendance of any person or the discovery or production of any document*, but the SJC did not exercise this power.

27. Article 19 of the Constitution stipulates that, '*every citizen shall have the right to freedom of speech and expression ... subject to any reasonable restriction imposed by law ...*'. The Code of Conduct issued by the SJC[23] does not prohibit a judge from addressing a bar association or even a

[23] *The Code of Conduct to be observed by the Judges of the Supreme Court and the High Courts of Pakistan*, Notification bearing No. F. SECRETARY-01/2009/SJC, dated 2 September 2009.

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public gathering, neither does any law. The SJC without ascertaining the veracity of the allegations, and without conducting an inquiry, had determined that Justice Siddiqui was guilty of misconduct merely because he had taken the matter public. If all that Justice Siddiqui alleged was true then it would be unjust and unfair to punish him for highlighting wrong doing at the highest level. But, if on the other hand what he had alleged was found to be false then he would be guilty of misconduct. The allegations were serious and their veracity should have been ascertained, which is also what the Chief of Army Staff and the Government of Pakistan had explicitly requested. Unless the law governing an individual prohibits disclosure, telling the truth is never made punishable.

28. As stated above the SJC did not state what particular misconduct Justice Siddiqui was guilty of. The SJC appears to have been shocked because Justice Siddiqui had made serious allegations and had done so publicly; without appreciating that these were not generalized allegations with regard to the ISI as a whole but against certain officers within its ranks, and specific allegations against his own Chief Justice.

29. The notes submitted by the Registrar/Secretary, the directions issued thereon by the Chief Justice/Chairman and the Report/Opinion of the SJC did not make any mention of letter dated 22 July 2018 of the Chief of Army Staff and of letter dated 24 July 2018 of the Government of Pakistan, which were addressed to the Registrar of the Supreme Court, and are respectively reproduced hereunder:

Chief of Army Staff's letter dated 22 July 2018:[24]

> 'Subj: Legal Process Against Allegations by Honourable Judge of Islamabad High Court
>
> 1. An honourable Judge of Islamabad High Court has leveled unwarranted / serious allegations against state institutions including honourable Judiciary and the premier State Intelligence Agency in a public gathering.
>
> 2. In order to safeguard the sanctity and credibility of the state institutions, it is requested that Honourable Supreme Court of Pakistan be approached to initiate appropriate legal process to ascertain the veracity of the allegations and take actions accordingly.
>
> 3. Forwarded for kind consideration, please.'

[24] Letter dated 22 July 2018, bearing No. 01/11/Misc/SD-1-AHP31U, issued by the Chief of Army Staff Secretariat, Staff Duties Directorate, General Headquarters, Rawalpindi.

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Government of Pakistan's letter dated 24 July 2018:[25]

> 'Subject:- LEGAL PROCESS AGAINST ALLEGATIONS BY HONOURABLE JUDGE OF ISLAMABAD HIGH COURT.
>
> Sir,
>
> I am directed to intimate that an honourable Judge of Islamabad High Court has leveled unwarranted/serious allegations against state institutions including honorable Judiciary and the premier State Intelligence Agency in a public gathering.
>
> 2. In order to safeguard the sanctity and credibility of the state institutions, it is requested to initiate appropriate legal process to ascertain the veracity of the allegations and take actions accordingly.
>
> 3. Forwarded for kind consideration, please.'

The above mentioned letters in almost identical language sought '*to initiate appropriate legal process to ascertain the veracity of the allegations*' levelled by Justice Siddiqui.

30. We can not be unmindful of the fact that two complaints, one from the Chief of Army Staff and another from the Government of Pakistan, both of which wanted '*to initiate proper legal process to ascertain the veracity of the allegations and take action accordingly*'. An inquiry was all the more necessary since neither the Chief of Army Staff's Secretariat nor the Government of Pakistan had determined the *veracity of the allegations*. Justice Khosa too in his initial opinion had stated '*that the matter requires an inquiry by the Supreme Judicial Council*.'[26]

31. The Government of Pakistan had wanted the veracity of the allegations to be determined in its letter dated 24 July 2018, but on 10 June 2021 a '*Statement on behalf of the Federal Government*'[27] was filed asserting that, '*as specific allegation about certain officers of the State were made in the petition and read out in Court, on instructions it is placed before this Hon'ble Court, that the allegations made are baseless, misleading and, therefore, denied.*' The said *Statement* was filed by the office of the Attorney-

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[25] Letter dated 24 July 2018, bearing No. 10/44/D-1(Army-1)/2018, Government of Pakistan, Ministry of Defence.
[26] Reproduced in paragraph 3.
[27] CMA No. 6053/2021, dated 10 June 2021.

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General for Pakistan[28] and contradicted the said letter of the Government of Pakistan. The irreconcilable contradiction was not reconciled by the Attorney-General nor was it disclosed how it had been ascertained that the allegations were baseless. Learned Mr. Anwar Mansoor Khan who was then the Attorney-General had undermined his credibility by his own conduct. The SJC was also apparently misled by the Attorney-General's understanding of the law, in contending that the SJC could go beyond the provisions of the Code of Conduct to determine what constitutes *misconduct* by a Judge. In its Report/Opinion the SJC wrote, that:

> 'We have found the learned Attorney-General to be quite correct in submitting that it has been made obvious by the Code of Conduct itself that the Code is not exhaustive of the traits and patterns of behavior of a Judge of the superior judiciary and it only indicates certain traditional requirements of behavior in the Judges of the superior courts conducive to the achievement of a standard of justice worthy of the nation. The Code of Conduct insists upon the highest qualities of intellect and character and speaks of patterns of behavior which are the hallmark of distinction of a Judge among his fellowmen. It may not be possible to lay down an exhaustive list of such qualities or behavior and that is why the Code of Conduct only makes an "attempt" "to indicate certain traditional requirements of behavior" leaving it to the Supreme Judicial Council comprising of the most senior and experienced Judges in the country to consider whether an alleged conduct of a Judge is offensive to the qualities and behavior traditionally expected of a Judge or not.'

32. The SJC augmented the provisions of the Code of Conduct by placing reliance upon a paragraph in the case of *Malik Shaukat Ali Dogar v Ghulam Qasim Khan Khakwani*,[29] which is reproduced hereunder:

> '10. The learned judge seized of the case is ordinarily free to form his own views about the prevailing evils in the country and to suggest his own remedies but it is of utmost importance that in the process widespread, general, non-specific condemnation of the established institutions should not take place, nor should individuals be targeted, or a feeling of despondency or helplessness aggravated from such a level and such a quarter which is looked upon for its balance, restraint, wisdom, ability to guide and control.'

The above decision was by a two-member Bench of this Court and the aforesaid observation was made before excising certain remarks made in the judgment of the High Court. The SJC while commenting upon the

[28] Mr. Anwar Mansoor Khan.
[29] PLD 1994 Supreme Court 281.

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said judgment noted that the Supreme Court '*had not based its observations on any statutory requirement or any specific Article in the Code of Conduct but had relied upon the "traditional requirements of behavior" expected of a Judge of a superior court.*' Undoubtedly, this Court had done so but in an entirely different context. It is also noteworthy that neither this Court nor the SJC had proceeded against the Judge (who had made the remarks) alleging that he had committed *misconduct*. This Court had also not stated that the words used by the Judge constituted *misconduct* on his part.

33. If Judges are to be adjudged by unspecified, arbitrary and vague notions of what constitutes appropriate *traits and patterns of behavior of a Judge* and the SJC is *to consider whether an alleged conduct of a Judge is offensive to the qualities and behavior traditionally expected of a Judge* it would place a Judge at the complete mercy of those who constitute the SJC. The Attorney-General's view, which was accepted by the SJC, did not accord with the Constitution, which stipulates that, '*The Council* [SJC] *shall issue a code of conduct to be observed by Judges of the Supreme Court and the High Courts.*'[30] The Constitution has empowered the SJC to issue the code of conduct, however, once it issues it the SJC must only adjudge in accordance therewith. This is also concomitant in ensuring the independence of the Judiciary since judges must not be left vulnerable to the likes and dislikes of the members of the SJC or to the vicissitudes of governments or to that of complainants.

34. It may be apt to quote Justice Frankfurter of the United States Supreme Court that '*The history of American freedom is, in no small measure, the history of procedure.*'[31] Procedural rules are derived from the generality of *due process* and help extract truth and dispel falsehood. Failure to abide by the Fundamental Right of *due process* resulted in Justice Siddiqui being treated unfairly and it was conjecturally assumed that he was making false allegations. In disregarding due process requirements individual freedom was curtailed and truth stifled.

35. Unfortunately, the delay that occurred in hearing and deciding these petitions meant that in the interregnum Justice Siddiqui attained the age of

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[30] Constitution of the Islamic Republic of Pakistan, Article 209(8).
[31] *Malinski v New York*, 324 US 401, 414 (1945).

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sixty-two years, at which age a Judge of the High Court retires.[32] Therefore, Justice Siddiqui cannot be restored to the position of Judge.

36. In view of the aforesaid reasons the SJC's Report/Opinion, dated 11 October 2018, which was submitted to the President and the Notification No. F.9(2)/2018-A.II, dated 11 October 2018, stated to have been issued on the advice of the Prime Minister and his Cabinet of Ministers are set aside. Consequently, Justice Siddiqui shall be deemed to have retired as a Judge of the Islamabad High Court and he will be entitled to receive all the benefits and privileges due to a retired Judge, by allowing these petitions in the above terms.

Chief Justice

Judge

Judge

Judge

Judge

Islamabad
(Farrukh)

Announced in open Court at Islamabad on 22 March 2024.

Chief Justice.

Approved for Reporting

[32] Ibid., Article 195.

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