IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

Intra Court Appeals No. 2, 3 and 4 of 2023
In
Constitution Petition No. 21 of 2022
AND
CMA No. 9264/2023 in ICA No. 02 of 2023

Islamic Republic of Pakistan through Secretary M/o Law and Justice, Govt. of Pakistan, Islamabad.
(in ICA No. 2/2023)

Zuhair Ahmed Siddiqui.
(in ICA No. 3/2023)

Muhammad Zahid Imran and another.
(in ICA No. 4/2023) *... Appellants/Applicant*

Versus

Imran Ahmed Khan Niazi and others.
(in ICA Nos. 2 and 3/2023)

Federation of Pakistan through Secretary, Law and Justice Division, Islamabad and another.
(in ICA No. 4/2023) *... Respondents*

For the Appellant: *(in ICA No. 2/23)*	Mr. M. Makhdoom Ali Khan, Sr. ASC. Mr. Saad Mumtaz Hashmi, ASC. Mr. Anis M. Shahzad, AOR.
For the Appellant: *(in ICA No. 3/23)*	Mr. Farooq H. Naek, Sr. ASC.
For the Appellants: *(in ICA No. 4/23)*	Nemo.
For Respondent No. 1: *(In ICA Nos. 2 & 3/23)*	Nemo.
For Respondent No. 3: *(In ICA No. 4/23)*	Nemo.
For the Federation:	Mr. Mansoor Usman Awan, Attorney-General for Pakistan. Ch. Aamir Rehman, Additional Attorney-General for Pakistan.

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For the NAB:	Ch. Mumtaz Yousaf, Additional Prosecutor-General, NAB. Mr. Nasir Mehmood Mughal, Deputy Prosecutor-General, NAB.
For Islamabad Capital Territory:	Mr. Ayyaz Shaukat, Advocate-General, Islamabad.
For Govt. of Sindh:	Mr. Hassan Akbar, Advocate-General, Sindh.
For Govt. of KP:	Mr. Shah Faisal, Advocate-General, KP.
For Govt. of Punjab:	Mr. Waseem Mumtaz Malik, Additional Advocate-General, Punjab.
For Govt. of Balochistan:	Mr. M. Ayaz Swati, Additional Advocate-General, Balochistan.
Dates of Hearing:	14.05.2024.

ORDER

Notices were issued on the last date of hearing. We enquired from the learned Additional Prosecutor General, National Accountability Bureau ('**NAB**') whether he is supporting the appeals or opposing them and he stated that NAB is supporting the appeals. Notices had also been issued to the Advocate-Generals of the provinces and the Islamabad Capital Territory and, except the Advocate-General of the Khyber Pakhtunkhwa, all are supporting the appeals. The Attorney-General for Pakistan also supports the appeals.

2. The respondent No. 1 in Intra Court Appeals No. 2 and 3 of 2023 and respondent No. 3 in Intra Court Appeal No. 4 of 2023, namely, Mr. Imran Ahmed Khan Niazi ('**Mr. Niazi**') is presently confined in Central Jail, Rawalpindi and was sent the certified copy of the order dated 31 October 2023 of this Court and the paper-books of the appeals. Our order had permitted Mr. Niazi to be represented by counsel but he has written saying that he wants to represent himself. Therefore, the Federal Government and the Government of the Punjab are directed to make arrangements to ensure that Mr. Niazi is able to hear Court Proceedings and is able to address this Court with regard to the appeals through video-link on the next date of hearing.

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3. We note that in the Constitution Petition No. 21 of 2022, filed by Mr. Niazi, he was represented by seven counsel, including learned senior counsel Khawaja Haris Ahmed. Therefore, it would be appropriate to issue notice to the learned Khawaja Haris Ahmed to assist this Court as he had already conducted the case wherefrom these appeals arise. In case learned senior counsel expects to be paid for services he should submit his bill, and this Court will attend to the same. It is clarified that this does not mean that Mr. Niazi will not be allowed to address this Court to rebut the submissions of the learned counsel representing the appellants.

4. Learned senior counsel Mr. Makhdoom Ali Khan has formulated the following contentions, which are adopted by learned senior counsel Mr. Farooq H. Naek, the learned Attorney-General for Pakistan and the learned Advocate-Generals of the three provinces and of Islamabad Capital Territory, except that of Khyber Pakhtunkhwa, who supports the majority judgment, as under:

i) The majority judgment is a nullity in law as it was passed by a Bench of this Court which was not constituted in accordance with sections 2, 3 and 4 of the Supreme Court (Practice and Procedure) Act, 2023 ('**the Act**') and resultantly it is *coram non judice*. The Act was enacted on 21 April 2023 and challenge to most of its provisions, including sections 2, 3 and 4, was rejected by this Court in the reported decision in the case of *Raja Amer Khan v Federation of Pakistan* (PLJ 2024 Supreme Court 114). Attention to this aspect was specifically brought to the Court by filing a separate application (CMA No. 7066 of 2023) but the order dated 29 August 2023 by a majority of two to one did not consider the grounds raised in the said application, however, the minority order of the same date did so and is in accordance with the Act.

ii) The Constitution Petition filed by Mr. Niazi under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ('**the Constitution**'), was not maintainable in the light of the decision of this Court in the case of *Benazir Bhutto v Federation of Pakistan* (PLD 1988 Supreme Court 416) as a Writ Petition No. 2557 of 2021 was filed by the Islamabad High Court Bar Association, through learned senior counsel Mr. Hamid Khan, and which was pending adjudication. Therefore, this Court should have awaited the

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decision thereof, where-after there was the possibility to assail the decision therein before this Court through a petition for leave to appeal or an appeal.

iii) The amendments made to the National Accountability Ordinance, 1999 *vide* National Accountability (Amendment) Act, 2022 and National Accountability (Second Amendment) Act, 2022 ('**the Amending Acts**') were struck down despite the fact that many of the provisions thereof were borrowed from the ordinances, enacted by the Government of which Mr. Niazi himself was the Prime Minister, as under:

> Ordinance No. XXI of 2019 ('**First Amendment Ordinance**')
> Ordinance No. XXVII of 2019 ('**Second Amendment Ordinance**')
> Ordinance No. V of 2021 ('**Third Amendment Ordinance**')
> Ordinance No. XXIII of 2021 ('**Fourth Amendment Ordinance**')
> Ordinance No. XXVI of 2021 ('**Fifth Amendment Ordinance**')
> (collectively referred to as '**the Amending Ordinances**').

iv) Mr. Niazi had not approached this Court in a *bona fide* manner and his antecedents prevented him from challenging the Amending Acts, many provisions whereof were the same as those in the Amending Ordinances, which were promulgated on the advice he had tendered to the President of Pakistan, which the President can only do if '*Circumstances exist which render it necessary to take immediate action*' as stipulated in Article 89(1) of the Constitution. Mr. Niazi also did not have the requisite *locus standi* since the Amending Acts did not adversely personally affect him. Consequently, this Court had carried out an academic exercise as there was no actual controversy before it in that neither his right nor that of any person had been adversely affected nor were the Amending Acts ex-facie discriminatory.

v) In the constitutional scheme it is for Parliament to legislate and courts to adjudicate and courts make every effort to uphold legislation unless it is unconstitutional, and if there are two views possible the one in favour of upholding the legislation is always preferred.

vi) The Amending Acts had sought to reduce the rigors of the National Accountability Ordinance, 1999, therefore, the same could not be stated to be violative of the citizens Fundamental Rights, which the Supreme Court may enforce under Article 184(3) of the Constitution.

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vii) The matter of retrospectivity was misunderstood and was not attended to in terms of the Constitution. Article 12 of the Constitution prohibits retrospective punishment but does not prohibit or restrict retrospective relief or benefit to be granted.

viii) Some of the amendments contained in the Amending Acts sought to give effect to the decisions of the superior courts, therefore, an anomalous situation has been created as the decisions of the superior courts, which were not under challenge, have been effectively negated.

ix) The majority judgment has re-written the Constitution and a number of statutes by creating an artificial distinction between *civil servants* and *public servants* and *elected holders of public office* and *persons in the service of Pakistan*. The minority judgment has correctly observed this.

x) The majority judgment accepted the limit of hundred million rupees prescribed in the Standard Operating Procedures ('**SoPs**') of NAB with regard to the cases it can investigate and send for trial but struck down legislation which had increased the limit to five hundred million rupees. SoPs, which are an administrative measure, cannot prevail over legislation enacted through the Amending Acts.

xi) The Amending Acts did not decriminalize any offence, and had only changed what may be investigated by NAB and the forum of the criminal trial, no person can be adversely affected with such change.

xii) If the Legislature could enact the NAB Ordinance it is also empowered to repeal it. However, in the present case only certain amendments were made to the NAB Ordinance.

5. Copy of this order be sent to learned senior counsel Khawaja Haris Ahmed and to Mr. Niazi to help them to formulate their responses to the aforesaid submissions.

6. NAB is directed to provide the following information for the last ten years:

(a) The number of cases it investigated;
(b) The number of prosecutions which were successful, and convictions sustained by the High Court and the Supreme Court;

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(c) The amounts recovered;

(d) Where was the amount deposited, and whether any portion was retained by NAB and if so the quantum thereof; and

(e) The amount spent on NAB.

7. To come up on Thursday, 16 May 2024 at 11.30 am.

Chief Justice

Judge

Judge

Judge

Islamabad:
14.05.2024
(M. Tauseef)

Approved for Reporting

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