

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Maqbool Baqar
Mr. Justice Manzoor Ahmad Malik
Mr. Justice Faisal Arab
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Sajjad Ali Shah
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Munib Akhtar
Mr. Justice Yahya Afridi
Mr. Justice Qazi Muhammad Amin Ahmed

CONSTITUTION PETITION NO.17 & 19 OF 2019
& C.M.A. NO.7417 OF 2019 IN CONST. P. 19 OF
2019 & CONSTITUTION PETITION NO.20-30,
32 & 34 OF 2019.

Justice Qazi Faez Isa	... <i>Petitioner(s)</i> <i>(in Const.P.17/2019)</i>
Supreme Court Bar Association thr. its President	... <i>Petitioner(s)</i> <i>(in Const.P.19/2019)</i>
Abid Hassan Minto & another	... <i>Petitioner(s)</i> <i>(in Const.P.20/2019)</i>
Pakistan Bar Council thr. its Vice Chairman	... <i>Petitioner(s)</i> <i>(in Const.P.21/2019)</i>
Abdul Basit, President High Court Bar Association, Quetta.	... <i>Petitioner(s)</i> <i>(in Const.P.22/2019)</i>
Muhammad Asif Reki, President Quetta Bar Association	... <i>Petitioner(s)</i> <i>(in Const.P.23/2019)</i>
Sindh High Court Bar Association thr. its President	... <i>Petitioner(s)</i> <i>(in Const.P.24/2019)</i>
Balochistan Bar Council thr. its Vice Chairman Haji Atta Ullah Langove	... <i>Petitioner(s)</i> <i>(in Const.P.25/2019)</i>
Sindh Bar Council thr. its Secretary	... <i>Petitioner(s)</i> <i>(in Const.P.26/2019)</i>

Hafiz Abdur Rehman Ansari, ASC	... Petitioner(s) (in Const.P.27/2019)
Karachi Bar Association through its President & other	... Petitioner(s) (in Const.P.28/2019)
KPK Bar Council through its Vice Chairman	... Petitioner(s) (in Const.P.29/2019)
Peshawar High Court Bar Association thr. its President	... Petitioner(s) (in Const.P.30/2019)
Shahnawaz Ismail, Vice Chairman Punjab Bar Council	... Petitioner(s) (in Const.P.32/2019)
Pakistan Federal Union of Journalists (PFUJ) thr. its President	... Petitioner(s) (in Const.P.34/2019)

VERSUS

The President of Pakistan and others	...Respondent(s) (in Const.P.17, 19, 21-25, 27-30, 32 & 34 of 2019)
The Supreme Judicial Council thr. its Secretary and others	... Respondent(s) (in Const.P.20&26/2019)

Const. P. No.17 of 2019.

For the petitioner(s) : Mr. Munir A. Malik, Sr. ASC.
Mr. Salahuddin Ahmed, ASC.
Ch. Atif Rafiq, ASC.
assisted by Barrister Kabir Hashmi.

Syed Kazim Hassan, ASC.
(through video link from Karachi).

Const. P. No.19 of 2019.

For the petitioner(s) : Mr. Hamid Khan, Sr. ASC.
assisted by:
Mr. Naseebullah Tareen, ASC.
Mr. Munir Kakar, ASC.
Mr. Ajmal Ghaffar Toor, Advocate.

Syed Qalb-e-Hassan, ASC.
Mr. Amanullah Kanarani, ASC.

Mr. Rasheed A. Rizvi, Sr. ASC.
(through video link from Karachi).

Const. P. No.20 of 2019.

For the petitioner (s) : Nemo.

Const. P. No.21 of 2019.

For the petitioner (s) : Sardar Muhammad Aslam, ASC.
Syed Rifaqat Hussain Shah, AOR.

Const. P. No.22 of 2019.

For the petitioner (s) : Mr. Naseebullah Tareen, ASC.

Const. P. No.23 of 2019.

For the petitioner (s) : Mr. Hamid Khan, Sr. ASC.
assisted by:
Mr. Naseebullah Tareen, ASC.
Mr. Munir Kakar, ASC.
Mr. Ajmal Ghaffar Toor, Advocate

Sh. Ahsan-ud-Din, ASC.

Const. P. No.24 of 2019.

For the petitioner (s) : Mr. Rashid A. Rizvi, Sr. ASC.
(through video link from Karachi).
Mr. Qasim Mir Jat, AOR.

Const. P. No.25 of 2019.

For the petitioner (s) : Mr. Hamid Khan, Sr. ASC.
assisted by:
Mr. Naseebullah Tareen, ASC.
Mr. Munir Kakar, ASC.
Mr. Ajmal Ghaffar Toor, Advocate

Mr. Rashid A. Rizvi, Sr. ASC.
(through video link from Karachi).

Const. P. No.26 of 2019.

For the petitioner (s) : Mian Raza Rabbani, Sr. ASC.

Mr. Saalim Salim Ansari, ASC
(through video link from Karachi).
assisted by:
Mr. Zeeshan Abdullah, Adv.

Const. P. No.27 of 2019.

For the petitioner (s) : Mr. Taufiq Asif, ASC.
Syed Rifaqat Hussain Shah, AOR.

Const. P. No.28 of 2019.

For the petitioner (s) : Mr. Rashid A. Rizvi, Sr. ASC.
(through video link from Karachi).

Const. P. No.29 of 2019.

For the petitioner (s) : Syed Iftikhar Hussain Gillani, Sr. ASC.
Assisted by:
Barrister Saad M. Buttar &
Barrister Jibran Gillani.

Const. P. No.30 of 2019.

For the petitioner (s) : Syed Iftikhar Hussain Gillani, Sr. ASC.
Assisted by:
Barrister Saad M. Buttar &
Barrister Jibran Gillani.

Const. P. No.32 of 2019.

For the petitioner (s) : Mr. Hamid Khan, Sr. ASC.
assisted by:
Mr. Naseebullah Tareen, ASC.
Mr. Munir Kakar, ASC.
Mr. Ajmal Ghaffar Toor, Advocate.

Const. P. No.34 of 2019.

For the petitioner (s) : Mr. Rashid A. Rizvi, Sr. ASC.
(through video link from Karachi).

For respondents (2&8) : Dr. Farogh Naseem, Sr. ASC. a/w
Ch. Ishtiaq Ahmed Khan, Addl. AG
Mr. Sajeel Sheryar Swati, ASC.
assisted by:
Barrister Maleeka Ali Bukhari
Ch. Hasssan Murtza Mann, Adv.
Mr. Shahid Naseem Gondal, Adv.

For respondents No. 1 : Mr. Sohail Mehmood, DAG.

For respondent No.3 : Mr. Aamir Rehman, Addl. AG.

For respondent No. 4 : Mr. Irfan Qadir, ASC
(through video link from Lahore)

For respondent No.9 : Dr. Khalid Ranjha, ASC. a/w
Mr.Sajeel Sheryar Sawati, ASC.

For Supreme Judicial Council : Khawaja Daud Ahmad, Secretary SJC.

Date of hearing : 19.06.2020.

ORDER

For detailed reasons to be recorded later and subject to any orders made or directions given therein (if any), these petitions are allowed and disposed of in the following terms:

1. Subject to what is stated below, the Order of the Court is that Reference No. 1 of 2019 is declared to be of no legal effect whatsoever and stands quashed, and in consequence thereof the proceedings pending in the Supreme Judicial Council (“Council”) against the Petitioner in CP 17/2019 (including the show-cause notice dated 17.07.2019 issued to him) stand abated.
2. Mr. Justice Yahya Afridi dismisses CP 17/2019 and disposes of the other petitions in terms as stated in para 1 herein above.
3. Mr. Justice Umar Ata Bandial, Mr. Justice Manzoor Ahmad Malik, Mr. Justice Faisal Arab, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sajjad Ali Shah, Mr. Justice Munib Akhtar and Mr. Justice Qazi Muhammad Amin Ahmed make the following orders as the further Order of the Court (paras 4 to 11 herein below):
4. Within 7 days of this Order, the concerned Commissioner of Inland Revenue shall himself (and not some other officer exercising delegated powers) issue appropriate notices under the Income Tax Ordinance, 2001 (“2001 Ordinance”) to the spouse and children of the Petitioner

to offer an explanation regarding the nature and source of the funds (separately for each property) whereby the three properties in the United Kingdom (viz., No. 40, Oakdale Road, London E11 4DL; No. 90, Adelaide Road, London E10 5NW; and No. 50, Coniston Court, Kendal Street, London W2 2AN) that are in the names of the spouse and the children were acquired. For purposes of this Order the Commissioner Inland Revenue having jurisdiction over the spouse of the Petitioner (who must be a Commissioner exercising jurisdiction and performing functions at Islamabad) shall be deemed also to be the Commissioner having jurisdiction over the children. (The spouse and children are herein after referred to as “the respondents”.) Any notices issued or proceedings taken (or proposed to be issued or taken) under the 2001 Ordinance in relation to any of the respondents in respect, or on account, of the properties aforesaid prior to the date of this Order stand terminated forthwith.

5. The notices shall be served at the official residence of the Petitioner at Islamabad through courier service and such other means as may be considered appropriate and shall be deemed served on the respondents when received at the said address.
6. The respondents shall furnish their replies to the notices along with such material and record as is deemed appropriate. In case any of them is outside the country, it shall be the responsibility of such person to timely file a response, and the proceedings before the Commissioner shall not be adjourned or delayed for the reason of non-availability in Pakistan of such person.
7. Upon receipt of the replies (and of such additional material/record as may be filed in response to such clarification or explanation, if any, as the Commissioner may, in writing, have sought), the Commissioner shall give an opportunity of hearing to the respondents in

person or through an authorized representative/counsel and shall thereupon make an order in accordance with the 2001 Ordinance.

8. The proceedings shall be concluded before the Commissioner within 60 days of the date of receipt of the notices as aforesaid, and the order shall be issued by him within 75 days of the said date of receipt, and no adjournment or extension in time whatsoever shall be given as affects or extends the aforesaid periods.
9. Within 7 days of the issuance of the order by the Commissioner, the Chairman, Federal Board of Revenue ("FBR") shall submit a report (to be personally signed by him) to the Council through its Secretary (i.e., the Registrar of the Supreme Court) regarding the proceedings as aforesaid, appending thereto the entire record of the said proceedings. The Secretary shall forthwith place such report before the Chairman of the Council (i.e., the Hon'ble Chief Justice of Pakistan) who shall, in such manner as is deemed appropriate, have the report laid before the Council for such perusal, consideration, action, order or proceedings, if any, in relation to the Petitioner as the Council may determine. The receipt of the report, the laying of it before the Council and the action/proceedings, if any, or orders or directions, if any, as may be taken, made or given by the Council thereon shall be deemed, for purposes of Article 209 of the Constitution, to be in exercise of the *suo moto* jurisdiction as is conferred by that Article on the Council.
10. If, within 100 days from the date of this Order, no report as aforesaid is received by the Secretary from the Chairman, FBR, he shall inform the Chairman of the Council accordingly and shall, if so directed by him, write to the Chairman, FBR requiring an explanation as to why the report has not been received. If in reply the report is filed, then the matter shall proceed in terms of para 9

herein above. If a reply is received without the report or no reply is received, then the Secretary shall bring such fact to the attention of the Chairman of the Council who may direct that the matter be placed before the Council for such perusal, consideration, action, order or proceedings, if any, in relation to the Petitioner (or any other person as deemed appropriate) as the Council may determine. The action/proceedings, if any, or orders or directions, if any, as may be taken, made or given by the Council shall be deemed, for purposes of Article 209 of the Constitution, to be in exercise of the *suo moto* jurisdiction as is conferred by that Article on the Council. Without prejudice to the foregoing, if at any stage the report is received from the Chairman, FBR, then the matter shall in any case proceed (or be deemed to proceed, as the case may be) in terms of para 9 herein above.

11. For the removal of any doubts, it is clarified that any of the proceedings under the 2001 Ordinance as herein contemplated on the one hand, and before the Council in terms of paras 9 or 10 herein above on the other, are distinct and separate from each other. Accordingly, nothing contained in this Order shall affect or prejudice the right(s) of appeal of any of the respondents under the 2001 Ordinance, if they feel aggrieved by the order made by the Commissioner or (as the case may be) any order made or decision taken at any appellate stage. Any such appeal(s) shall be decided on the merits, in accordance with the 2001 Ordinance. At the same time (and needless to say), the consideration by the Council of any matter placed before it under either paras 9 or 10 herein above shall not be affected by the filing or pendency of any appeal as aforesaid. But the Council may, if it deems appropriate, notice such appellate proceedings or orders/decisions and may (for purposes only of the matter before it) make such orders or give such directions in relation thereto as it deems appropriate.

12. Mr. Justice Maqbool Baqar, Mr. Justice Mansoor Ali Shah and Mr. Justice Yahya Afridi join in the Order of the Court only to the extent of para 1 herein above, and also make their own order.

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**Order per Maqbool Baqar, Syed Mansoor Ali Shah
and Yahya Afridi, JJ.**

13. For the reasons to be recorded later and without limiting our jurisdiction in any manner to appropriately enlarge the scope of or make appropriate declarations and directions in the detailed judgment, subject to para 15 hereunder, we hold the above petitions maintainable and allow the same. One of the outcomes of such declaration is that the Reference filed by the President of Pakistan against the Petitioner (Mr. Justice Qazi Faez Isa) is quashed, and as a result the proceedings alongwith the Show Cause Notice issued by Supreme Judicial Council stand abated.

14. One of our pivotal Constitutional values is that the independence of judiciary shall be fully secured. The same Constitution also ordains that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Therefore, it is reiterated that in our constitutional democracy, neither the petitioner judge, nor any other judge, or any individual or any institution, is above the law. The doors of the constitutional forum i.e., Supreme Judicial Council are always open, either on its own motion or for anyone who has a genuine and a bonafide grievance, amenable to the jurisdiction of the Council against a Judge of the Constitutional Court. At the same time, it is equally important, that a Judge like any other citizen of Pakistan enjoys the inalienable constitutional right to be treated in accordance with law. These fundamental values are to be protected at all cost in order to uphold the majesty and supremacy of the

Constitution and to honour the people of Pakistan who have adopted and given to themselves this Constitution.

15. Yahya Afridi, J. has however found Constitutional Petition No. 17/2019 as non-maintainable.

Maqbool Baqar, J.

Syed Mansoor Ali Shah, J.

Yahya Afridi, J.

Islamabad
19.06.2020.

APPROVED FOR REPORTING.