

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa, CJ
Mr. Justice Amin-ud-Din Khan
Mr. Justice Athar Minallah

Civil Petition No. 3532/2023

(On appeal against the judgment dated 13.06.2023
passed by the Islamabad High Court, Islamabad
in ICA No. 190/2023)

Mukhtar Ahmad Ali. ... *Petitioner*

Versus

*The Registrar, Supreme Court of Pakistan,
Islamabad and another.* ... *Respondents*

Petitioner: In-person
For Respondent No. 1: In-person
On Court's Call: Mr. Mansoor Usman Awan,
Attorney-General
Ch. Aamir Rehman, Addl. AGP
Date of Hearing: 27.09.2023

JUDGMENT

Qazi Faez Isa, CJ. A letter dated 10 April 2019 was addressed to the Registrar of the Supreme Court through which the petitioner sought the following information:

- a) Total sanctioned strength of staff members of Supreme Court of Pakistan (categories-wise) against different positions/pay-scales i.e. from pay scale 1 to 22 (category-wise).
- b) Total vacancies in the Supreme Court of Pakistan against different pay-scales/positions (category-wise); and dates since which these positions have been lying vacant.
- c) Number of staff members who are not regular but have been engaged on daily-wages basis or through short-term or long-term contracts against various positions/pay-scales (category-wise).
- d) Number and types of positions created a new since January 1, 2017.

- e) Total number of female staff members (category-wise) against various positions/pay-scales. The response may distinguish between the short-term/temporary staff members and regular ones.
- f) Total number of persons with disabilities working with Supreme Court of Pakistan against various positions/pay-scales (category-wise). The response may distinguish between the short-term/temporary staff members and regular ones.
- g) Total number of transgender persons working with Supreme Court of Pakistan against various positions/pay-scales (category-wise). The response may distinguish between the short-term/temporary staff members and regular ones.
- h) A certified copy of the latest approved Service Rules of the Supreme Court of Pakistan.'

2. The petitioner stated that as a citizen of Pakistan it was his fundamental right bestowed by Article 19A of the Constitution of the Islamic Republic of Pakistan (**'the Constitution'**) to receive the information which he had sought. He also relied upon the Right of Access to Information Act, 2017 (**'the Act'**). The petitioner stated that as his request remained unattended, he submitted an appeal to the Pakistan Information Commission (**'the Commission'**) under section 17 of the Act on 6 May 2019. The Commission wrote to the Registrar referring to section 9 of the Act stating that the Supreme Court may designate a *Public Information Officer* and having done so the information sought by the petitioner be provided to him by the said officer. The Commission sent a reminder on 16 July 2019 and when that was not responded to, the Commission sent another reminder dated 26 July 2019. By letter dated 8 August 2019 the Registrar of the Supreme Court refused to provide the information and referred to an Office Order dated 30 September 2014 as the reason for refusal. Since the petitioner was not satisfied with the Registrar's response, he invoked section 17 of the Act, which resulted in Appeal No. 060-06/19 before the Commission. On 12 July 2021, the Commission, comprising of the Chief Information Commissioner and two Information Commissioners, allowed the petitioner's appeal and directed that the information be provided to him.

3. Mr. Jawad Paul, who was the Registrar of the Supreme Court at the relevant time, submitted an application calling upon the Commission to withdraw its order dated 12 July 2021. Notice was issued by the Commission; the petitioner submitted his response and the Registrar submitted his written submissions through '*Ch. Aamir Rehman, Additional Attorney-General/counsel for the applicant/respondent*'. The Commission *vide* order dated 17 November 2021 decided that the request to withdraw the Commission's order '*falls outside the scope of the powers vested in this Commission under the Right of Access to Information Act, 2017.*'

4. On 22 November 2021, the Chief Justice of Pakistan¹ directed that the Additional Attorney-General ('**AAG**') should challenge the orders of the Commission and file a writ petition before the Islamabad High Court. Resultantly, Writ Petition No. 4284 of 2021 was filed by the *Registrar, Supreme Court of Pakistan* wherein the Commission and the petitioner were arrayed as respondents, praying that, '*the impugned Orders dated 12.07.2021 and 17.11.2021*' passed by the Commission be declared '*illegal, unlawful and without jurisdiction*'. The writ petition was allowed *vide* judgment dated 3 April 2023 and the impugned orders were set aside on the ground that the Supreme Court '*is not a public body for the purposes of the Act and it does not fall within the jurisdiction of Pakistan Information Commission*'.

5. Since the writ petition was decided by a learned Single Judge, the petitioner preferred an intra-court appeal (ICA No. 190/2023) under section 3 of the Law Reforms Ordinance, 1972 against the judgment before a Division Bench. But since the appeal was belatedly filed, therefore, the Division Bench of the Islamabad High Court, without attending to the merits of the case, held that since sufficient reason to condone delay had not been given, the application seeking the delay to be condoned was dismissed and consequently the intra-court appeal was dismissed, as being time-barred.

6. The petitioner who represents himself commenced his submissions by referring to Article 19A of the Constitution, which reads as under:

¹ Mr. Justice Gulzar Ahmed.

'Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.'

He submitted that Article 19A does not exclude the Supreme Court. He further submitted that neither the information which was sought was sensitive nor was of a nature that required it to be kept secret. As regards the impugned judgment of the learned Single Judge, the petitioner stated that the orders of the Commission were set aside on a technicality without considering Article 19A of the Constitution. And, as regards the dismissal of the intra-court appeal on the ground that it was belatedly filed, the petitioner submitted that the learned Single Judge had heard the case on 3 April 2023, but the petitioner was not informed about the announcement of the judgment and he learnt of it from social media. He stated that he is not an advocate and represented himself before the High Court, therefore, a notice informing him of the announcement of the judgment should have been sent. The petitioner stated that the Act sets out how requests for information are submitted and that there is no reason to exclude the Supreme Court from the Act's applicability, particularly when disclosure of the required information was not proscribed. He also relied upon the order of the Commission which had directed the Registrar to provide the said information.

7. Ch. Aamir Rehman, learned AAG, informed us that he was directed by the then Attorney-General for Pakistan² ('AG') who had been instructed by the Registrar of the Supreme Court to file a representation before the Commission and to assail the orders of the Commission before the High Court, and this was done without receiving any remuneration.

8. We have observed that litigation was initiated in the name of the Supreme Court by the Registrar. The Supreme Court Rules, 1980 ('**the Rules**') provide that the Registrar is the '*executive head of the office and shall exercise such powers as assigned to him*'.³ The Rules do not grant to the Registrar the specific power to initiate litigation and though the Chief Justice may assign '*any function required by the Rules to be performed by the Registrar*', the Rules do not *require*, nor envisage, initiating litigation. Therefore, the Registrar could not be given this responsibility nor could

² Mr. Khalid Jawed Khan,

³ Supreme Court Rules, 1980, Order III, rule 1.

he undertake it. The Constitution defines the Supreme Court as the Chief Justice and Judges of the Supreme Court.⁴ However, litigation was initiated by the Registrar without the approval of the Supreme Court (as defined in the Constitution). At the relevant time a bureaucrat⁵ was serving as Registrar who may not have been aware of the Rules and constitutional stipulations. The learned AAG, who represented the Supreme Court, is employed by the office of the AG. The AG attends to the matters of the Federal Government,⁶ which is part of the Executive and mandated to be separate from the Judiciary.⁷ The instant matter concerned the Supreme Court, and had no concern with the Federal Government.

9. The question of maintainability of the writ petition, filed by the Registrar of the Supreme Court before the High Court, was raised before the learned Single Judge who held the petition to be maintainable by referring to the cases of *Registrar Supreme Court of Pakistan v Hassan Akbar*⁸ and *Registrar Supreme Court of Pakistan v Qazi Wali Muhammad*.⁹ The *Hassan Akbar* case was with regard to a complaint against an Assistant Advocate-General who had appeared before the Supreme Court when he was not enrolled as an Advocate of the Supreme Court; the matter arose out of the recommendations of the Disciplinary Committee, therefore, it cannot be cited as a precedent entitling the Supreme Court to initiate litigation. In the other case, Qazi Wali Muhammad was terminated from the service of the Supreme Court and had filed an appeal before the Federal Service Tribunal, whose order reinstating him was challenged by the Registrar before the Supreme Court under Article 212 (3) of the Constitution. This Court held that Qazi Wali Muhammad was not a civil servant as defined in the Civil Servants Act, 1973, therefore, the Tribunal did not have jurisdiction. The Registrar had not initiated litigation in the *Qazi Wali Muhammad* case; he had not filed the appeal before the Tribunal. The particular facts and the very limited scope of these two cases cannot be treated as precedents enabling the

⁴ Constitution of the Islamic Republic of Pakistan, Article 176.

⁵ Mr. Jawad Paul.

⁶ Constitution of the Islamic Republic of Pakistan, Article 100(3).

⁷ *Ibid*, Article 175(3).

⁸ 1987 PCrLJ 1321.

⁹ 1997 SCMR 141.

Registrar to initiate litigation on behalf of the Supreme Court, particularly when judgments in neither case had discussed this aspect.

10. The learned AG, Mr. Mansoor Usman Awan, stated that the Act applies only to *public bodies* as defined in its section 2(ix) and this definition does not include the Supreme Court. And, though the Act is applicable to '*court, tribunal, commission or board under the Federal law*', the Supreme Court is established under the Constitution, and not under a Federal law, nor is the Supreme Court a public body of the Federal Government to which the Act does apply. Therefore, the Act was not applicable and the Commission did not have jurisdiction with regard to the Supreme Court. The learned AG, however, did suggest self-regulation and that the Supreme Court may make the envisaged regulations stipulating how applications seeking information should be submitted and who and how information should be provided under Article 19A. He further suggested that if the person authorized to provide information refused to provide it, there should be a chamber appeal against such refusal before a Judge.

11. We have heard the petitioner and the learned AG and have examined the provisions of the Act and the Constitution. We are in agreement with the learned AG that the Act clearly does not apply to the Supreme Court of Pakistan. Therefore, the appeal preferred by the petitioner before the Commission was not maintainable and to such extent the learned Single Judge of the High Court had correctly determined the matter. However, the matter does not end there.

12. The question of whether the petitioner can seek information under Article 19A of the Constitution still needs consideration. The Supreme Court is not excluded from the purview of Article 19A of the Constitution, and information of '*public importance*' can be sought thereunder. It now needs consideration as to what constitutes *public importance*. The phrase '*public importance*' is mentioned in a number of places in the Constitution,¹⁰ but it does not define it. The phrase however has been

¹⁰ Constitution of the Islamic Republic of Pakistan, Articles 184(3), 186(1) and 212(3).

interpreted by this Court. In the case of *Manzoor Elahi v Federation of Pakistan*,¹¹ it was held that:

'The term "public" is invariably employed in contradistinction to the terms private or individual, and connotes, as an adjective, something pertaining to, or belonging to, the people; relating to a nation, state, or community. In other words, it refers to something which is to be shared or participated in or enjoyed by the public at large, and is not limited or restricted to any particular class of the community. As observed by the Judicial Committee of the Privy Council in *Hamabai Framjee Petit v. Secretary of State for India-in-Council* ILR 39 Bom. 279 while construing the words public purpose such a phrase, "whatever else it may mean must include a purpose, that is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned". This definition appears to me to be equally applicable to the phrase "public importance".'

The phrase *public importance* with particular reference to Fundamental Rights was dilated upon in the case of *Benazir Bhutto v Federation of Pakistan*,¹² as under:

'Lastly is the consideration of the connotation of the expression "public importance" which is tagged to the enforcement of the Fundamental Rights as a pre-condition of the exercise of the power. This should not be understood in a limited sense, but in the gamut of the constitutional rights of freedoms and liberties, their protection and invasion of such freedoms in a manner which raises a serious question regarding their enforcement. Such matters can be viewed as of public importance, whether they arise from an individual's case touching his human rights of liberty and freedom, or of a class or a group of persons as they would also be legitimately covered by this expression.'

13. What previously may have been on a *need-to-know* basis Article 19A of the Constitution has transformed it to a *right-to-know*. The burden has shifted from those seeking information to those who want to conceal it. Access to information is no longer a discretion granted through occasional benevolence, but is now¹³ a fundamental right available with every Pakistani which right may be invoked under Article 19A of the Constitution.

¹¹ PLD 1975 Supreme Court 66, p. 144.

¹² PLD 1988 Supreme Court 416, p 491.

¹³ Article 19A was inserted into the Constitution through section 7 of the Constitution (Eighteenth Amendment) Act, 2010.

14. We may observe that it is only when citizens have access to the requisite information can they meaningfully question those paid from the public exchequer, and who are meant to serve their interests. The importance of the peoples' right to information was articulated 200 years ago:

*'A popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives.'*¹⁴

By now over 100 countries have some form of freedom of information legislation.¹⁵ The United States Supreme Court has held it to be concomitant with democracy, accountability and safeguarding against corruption:

*'The basic purpose of (The Freedom of Information Act) is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.'*¹⁶

15. Access to information laws are also taking on a new meaning - of efficient administration of government, as a contributor to economic growth and a catalyst for the development of information industries.¹⁷ And restricting information has an immense cost, as observed by the World Bank:

*'Lack of transparency can be costly both politically and economically. It is politically debilitating because it dilutes the ability of the democratic system to judge and correct government policy by cloaking the activities of special interests and because it creates rents by giving those with information something to trade. The economic costs of secrecy are staggering, affecting not only aggregate output but also the distribution of benefits and risks. The most significant cost is that of corruption, which adversely affects investment and economic growth.'*¹⁸

¹⁴ James Madison's letter to W. T. Barry, August 4, 1822, cited in *Environmental Protection Agency v. Mink*, 410 U.S. 73, 110-111 (1973), as quoted in the dissenting note of Douglas, J.

¹⁵ 'Encyclopedia of Privacy' William G. Staples, Bloomsbury Academic, 2006.

¹⁶ *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

¹⁷ 'The World's Right to Know' Thomas Blanton, Foreign Policy No. 131 (Jul-Aug 2002), pp. 50-58.

¹⁸ Tara Vishwanath, Daniel Kaufman, The World Bank Research Observer, vol. 16, no. 1, pp. 41-57.

Access to information thus secures the *well-being of the people*, which is what the nation aspires towards as stated in the Principles of Policy set out in the Constitution.¹⁹

16. High standards were set in early Islam and those governing had to provide information. The second caliph Hazrat Umar bin Al-Khattab (may Allah be pleased with him) was questioned about the quantity of material used in the making of his shirt; he did not object to being questioned and told his son, Abdullah bin Umar, to explain, who said that in view of his father's large size, extra material which was used to make his shirt was given by him.²⁰

17. Transparency brings with it the added benefit of introspection, which benefits institutions by promoting self-accountability. Article 19A stipulates that information be provided *subject to regulation and reasonable restrictions imposed by law*. However, there is no law which attends to the Supreme Court in this regard nor has the Supreme Court itself made any regulations. Needless to state that if a law is enacted and/or regulations made, requests for information would be attended to in accordance therewith and in accordance with Article 19A.

18. Article 19A envisages the placing of *reasonable restrictions* on the provision of information, but refusing to provide information is to be justified by the person, authority or institution withholding it. In the present case, there is no reason why the information sought by the petitioner should not be provided, nor can the provision of such information be categorized as being contrary to the public interest. Consequently, the information sought by the petitioner should have been provided to him.

19. Therefore, for the reasons mentioned above, this petition is converted into an appeal and is allowed by directing the Registrar of the Supreme Court to provide the said information to the petitioner within seven days. The office is also directed to refund to the petitioner the court fee paid by him on this petition and on the intra-court appeal filed in the High Court.

¹⁹ Constitution of the Islamic Republic of Pakistan, Article 38(a).

²⁰ Ibn Qayyim al-Jawziyah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), vol. 2, p. 133.

20. In view of the public importance of this matter, and as this is the first case of its kind decided by the Supreme Court, this judgment is to be translated into Urdu. The English version shall be treated as this Court's decision in terms of Article 189 of the Constitution.

Chief Justice

Judge

I have added additional reasoning
Judge

Islamabad
(Farrukh)

Announced in open Court at Islamabad on 16 October 2023.

Chief Justice

Approved for Reporting