

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Maqbool Baqar

CMA No. 490/2021 in Const. P. No. 20/2013

On Court's notice: Mr. Khalid Jawed Khan,
Attorney-General for Pakistan

Date of Hearing: 03.02.2021

ORDER

It has been widely reported, including in a responsible newspaper, daily *Dawn* of 28 January 2021, under the title, '*Rs500m uplift grant for each lawmaker okayed*' and quotes a minister that, '*The prime minister announced Rs500m for each MNA and PMA so that they can initiate development schemes in their constituencies*'. On 1 February 2021 the same newspaper wrote an editorial titled, '*Development funds*' and questioned '*the decision by Prime Minister Imran Khan to hand out half a billion rupees in development funds to each federal and provincial lawmaker of his party for carrying out schemes in their respective constituencies...*'. Apparently, neither the news report nor the subsequent editorial comment were denied or contradicted by the Government or by the Prime Minister.

2. This Court in the case of *Action against Distribution of Development Funds by Ex-Prime Minister* (PLD 2014 Supreme Court 131), after a detailed consideration of the different articles of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**') and the applicable rules observed, that:

- '*... it is obligatory upon the Federal Government to lay before the National Assembly the supplementary Budget Statement so that it is subjected to the same scrutiny and procedure as is applicable to the Annual Budget Statement in terms of Articles 80 to 83 ibid.*' (paragraph 31)
- '*... under the Constitution there is no provision whatsoever that permits to use allocation of funds at the discretion of the Prime Minister/Chief Minister.*' (paragraph 40)

- 'In other words, item-wise estimate of the grant is required to be placed before the National Assembly for discussion in terms of rule 186 *ibid.*' (paragraph 42)
- '... to leave or earmark any amount of money to be used/allocated at some subsequent stage during the financial year at the discretion of the Prime Minister/Chief Minister is also repugnant to the very concept and connotation of the Annual Budget Statement.' (paragraph 45)
- 'In fact, expenditure envisaged to be incurred under the Constitution is not "person specific", rather it is "grant specific"...' (paragraph 46)
- '... the language employed in the above referred provisions of the Constitution i.e. Articles 80 to 84 *ibid.*, implicitly excludes such person-specific allocations.' (paragraph 49)
- '... the allocation of funds for development schemes has to be made following the procedure provided in Articles 80 to 84 of the Constitution and the rules/instructions noted hereinabove.' (paragraph 51)

The Judgment of this Court concluded and held (paragraph 52) as under:

- (1) The National Assembly, while giving assent to a grant which is to be utilized by the Executive at its discretion, has to follow the procedure provided in Articles 80 to 84 of the Constitution as well as the Rules of Procedure, 2007. However, such discretionary grant can not be spent at the absolute discretion of the Executive and the discretion has to be exercised in a structured manner;
- (2) The Constitution does not permit the use/allocation of funds to MNAs/MPAs/Notables at the sole discretion of the Prime Minister or the Chief Minister. If there is any practice of allocation of funds to the MNAs/MPAs/Notables at the sole discretion of the Prime Minister/Chief Minister, the same is illegal and unconstitutional. The government is bound to establish procedure/criteria for governing allocation of such funds for this purpose;
- (3) Though funds can be provided for development schemes by way of supplementary grant but for that purpose procedure provided in Articles 80 to 84 of the Constitution and the rules/instructions noted hereinabove has to be followed strictly;

- (4) Funds can be allocated by way of re-appropriation but the procedure provided in the Constitution and the rules has to be followed in its true perspective;
- (5) No bulk grant can be made in the budget without giving detailed estimates under each grant divided into items and that every item has to be specified.
- (6) The amounts as approved in the budget passed by the National Assembly have to be utilized for the purpose specified in the budget statement. Any re-appropriation of funds or their utilization for some other purpose, though within the permissible limits of the budget, are not justified. In such circumstances, the supplementary budget statement has to be placed before the Parliament following the procedure provided in Articles 80 to 84 of the Constitution and the rules/instructions noted hereinabove."

The equivalent to Articles 80 to 84 of the Constitution with regard to the provinces of the Islamic Republic of Pakistan is Articles 120 to 124 respectively of the Constitution.

3. Clause (2) of Article 5 mandates that, '*Obedience to the Constitution and the law is the inviolable obligation of every citizen*', clause (2)(a) of Article 204 empowers this Court to take action against *any person* who '*disobeys any order of the Court*' and the oath of office of Judges requires them to '*preserve, protect and defend the Constitution*'.

4. In view of the aforesaid position, we sent for the learned Attorney-General for Pakistan ('Attorney-General') and seek his opinion and advice as to (a) whether the said distribution of public funds accorded with the Constitution and the cited precedent and (b) whether the Federal and provincial governments had handed over or intended to hand over monies to the legislators and/or carry out development works identified by them. The learned Attorney-General states that he needs time to ascertain the facts, however, states that he will not countenance anything against any provision of the Constitution and the cited precedent of this Court.

5. Therefore, before proceeding further with this matter, in view of the statement of the learned Attorney-General, we want to ascertain the answers to the questions (a) and (b) posed in the aforesaid paragraph. Office is directed to issue notices to the Federal Government through the

Cabinet Secretary/Principal Secretary to the Prime Minister, Secretary Ministry of Finance, Government of Pakistan and to all the provincial governments through their respective Chief Secretaries and Secretary Finance Departments. Notices also to be issued to the learned Attorney-General and to the Advocate Generals of Balochistan, Sindh, Khyber Pakhtunkhwa, Punjab and of the Islamabad Capital Territory. Copy of this order to accompany the notices and the recipients are directed to submit their respective responses/replies.

6. Depending on the responses/replies, this matter may either be concluded or if the responses/replies are considered by us to not accord with the Constitution and the cited precedent, the same may be required to be taken further; and if we come to the latter conclusion, to refer the matter to the Hon'ble Chief Justice for the constitution of a bench for determination thereof.

7. To come up on **10 February 2021**.

Judge

Judge

Bench-IV
Islamabad
03.02.2021
(Farrukh)