

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, J.--- I have had the privilege to go through the main judgment authored by the Hon'ble Chief Justice. I agree with the same but I will also give a concurring judgment of my own comprising reasons in support of our unanimous short order dated 07.04.2022 (**PLD 2022 SC 290**), accordingly.

2. A resolution for a vote of no-confidence ("**the resolution**") against Mr. Imran Ahmed Khan Niazi, the then Prime Minister of Pakistan ("**the PM**") was submitted on 8th March, 2022 by a large number of the Members of the National Assembly ("**MNAs**"), well beyond the prescribed twenty per centum of the total membership of the National Assembly as required under Article 95(1) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"). On 20.03.2022 a Session of the National Assembly was summoned by the Speaker for 25.03.2022. On 25.03.2022 the session was adjourned after *Fateha* for a deceased MNA. On 28.03.2022 leave to move the resolution for vote of no confidence was granted by the House and the session was again adjourned to 31.03.2022 for discussion on the resolution. After some discussion, the session was adjourned from 31.03.2022 to 03.04.2022 for voting on the resolution for vote of no confidence. On 03.04.2022, the session was presided over by the Deputy Speaker (**Qasim Khan Suri**) without any explanation why the Speaker did not preside over. On 03.04.2022, Mr. Fawad Ahmed Chaudhary, Minister for Law & Justice rising on a point of order, submitted before the House while referring to Article 5 of the Constitution that in the normal circumstances under Article 95 it is the right of the members of House to move a resolution for vote of no confidence against the PM; however, the present resolution against the PM was apparently linked with and has a clear nexus with the efforts of a Foreign State to bring about change of government and as such cannot be entertained or allowed to be voted upon in this august House, and must be rejected. Whereupon the Deputy Speaker, without waiting even for a single moment, read in the House his pre-drafted ruling ("**impugned ruling**") dated 03.04.2022, rejecting the resolution for vote of no confidence against the PM and consequently did not allow voting on the same. The Speaker (**Asad Qaisar**) also concurred with the said ruling by

signing the same. The impugned ruling is reproduced herein below for ready reference:

**“RULING OF THE SPEAKER ON NO-CONFIDENCE
RESOLUTION**

1. On today the 3rd April 2022, Mr. Fawad Ahmed Chaudary, Minister for Law and Justice rising on a point of order drew attention of the Chair that in the normal circumstances under Article 95 of the Constitution it is right of the members to move a resolution for vote of no-confidence against the Prime Minister. He further stated that Article 5 of the Constitution provides that it is the basic duty of the every citizen to show the loyalty to the State. He also pointed out that Pakistani diplomat met with the officials of the foreign state and also informed about the intention of that State against the Prime Minister Imran Khan.

2. A notice for requisitioning the session of National Assembly was filed by members of the opposition in terms of Article 54(3) of the Constitution of Pakistan, with the Secretariat of the National Assembly on 8-3-2022. On the same date i.e., 8-3-2022 another notice under Rule 37 of the National Assembly Rules, for the notice of resolution of no confidence against Mr. Imran Khan, as Prime Minister was filed with the Secretariat of the National Assembly.

3. The session of the National Assembly was summoned to be held on 25-3-2022. After offering fateha the session was adjourned for 28-3-2022. On that date leave for moving resolution for a vote of no confidence in terms of Article 95 of the Constitution was granted and the session was adjourned for 31-3-2022. The session was then adjourned for 3-4-2022.

4. In the meanwhile Prime Minister Iman Khan addressed a public rally on 27-3-2022 at Parade ground, Islamabad. Mr. Shah Mahmood Qureshi, Minister for Foreign Affairs and Prime Minister Imran Khan briefly disclosed about a foreign country's interference in the internal affairs and parliamentary process in Pakistan. The details as later emerged were that on 7-3-2022 Pakistan's Ambassador deputed to an important foreign capital sent official correspondence i.e. cypher narrating details of a meeting and conversation with high official(s) of that foreign state. The gist of the contents of the cypher indicated that the foreign state was interfering in the internal affairs of Pakistan and Prime Minister Imran Khan was its primary target. The circumstance shows that there was nexus between no confidence motion against Prime Minister and the foreign intervention and the activities of that State's representatives deputed to Pakistan. The Federal cabinet as well as the National Security Committee (NSC) headed by Prime Minister, some members of the Federal Cabinet, The Chairman, Joint Chiefs of Staff Committee, and the three services Chiefs, meeting on 31 3- 2022 was briefed about the unwarranted foreign, interference in the internal affairs of Pakistan. It is a matter of record that after the meetings of the Federal Cabinet and the National Security Committee, Pakistan formally conveyed a demarche to the foreign state concerned.

5. Given the above facts and circumstances a briefing for the Parliamentary Committee on the National Security was arranged for briefing on the issue on 31-3-2022. Unfortunately the concerned members of the opposition choose to boycott or ignore the briefing. However, as Speaker and custodian of the

National Assembly, I asked the concerned functionaries of the Government to provide me the relevant facts and information subject to the applicable laws. This was accordingly done. The facts revealed to me were absolutely shocking and completely unacceptable for any independent people with self respect and dignity. I was fully convinced that there was blatant foreign interference in the internal affairs of Pakistan and the duly elected Prime Minister of Pakistan was the prime target. When was even more shocking was the apparently close nexus and proximity between blatant foreign interference and the motion of no confidence against the Prime Minister also became evident.

6. *For a number of reasons and save for what I have observed hereinabove, I would presently refrain from giving more and specific details about the foreign intervention and its links to the no-confidence motion moved against the Prime Minister Imran Khan. If and when so required by this august House and subject to applicable laws, details and specifics of foreign interference in the internal affairs of Pakistan and its parliamentary process including no confidence motion can be provided and discussed in greater detail in closed door in camera session.*

7. *Suffice it to say that to me it is now clear that there has been blatant foreign interference in the internal affairs of Pakistan and there exists a close nexus between such foreign interference and the campaign to oust and remove the democratically elected government headed by Prime Minister Imran Khan through different means including the motion for no-confidence initiated on 8-3-2022. No self respecting independent, democratic country and people with national pride and dignity could or should ever let such things to happen nor allow its democratic institutions including parliamentary processes to be so grossly abused by foreigners or foreign states to bring a change of any Government or Prime Minister as appears to be the case presently.*

8. *The membership of this august House is a matter of great honour and trust for every member. Any action though purported to be under the Constitution and the Rules but for extraneous purposes and goals which could compromise the sovereignty and independence of the country could not be sustained under any circumstances. Any such attempt must be thwarted and quashed.*

9. *The motion of no confidence against the Prime Minister is apparently linked with and has clear nexus with the efforts of the foreign State to bring about change of Government cannot be entertained or allowed to be voted upon in this august House and must be rejected empathetically as this could ever be the intent of the Constitution. The fundamental existential issue should be clearly settled first leaving no doubt or taint of external interference or collusion of Pakistani citizens including few member of the National Assembly. If any, in this unholy venture. This would require a thorough investigation by appropriate forum or authority under the law. However, without such thorough probe, if such motion no-confidence is entertained in the grab of parliamentary process now or allowed to succeed and a foreign country is able to achieve its goal to oust a democratically elected Government and/or Prime Minister in this manner, we shall cease to be an independent and sovereign country governed by the Constitution and the laws.*

10. *I, as the Deputy Speaker and custodian of the House and bound by the oath taken by me under the Constitution of*

Pakistan to preserve, protect and defend the Constitution cannot remain indifferent or act as unconcerned spectator let alone be instrumental in this unconstitutional act of change of Government and /or Prime Minister orchestrated by a foreign state. The present motion of no confidence being the very essence of the internal proceedings of the House cannot be entertained or allowed by me to proceed in these circumstances and has to be disallowed and accordingly rejected.

Note:

These are the detailed reasons of my order dated 3rd April 2022 in the sitting of the National Assembly

**(Qasim Khan Sun)
Deputy Speaker
National Assembly of Pakistan**

I concur with the above ruling.



**(Asad Qaisr)
Speaker**

3rd April 2022

National Assembly of Pakistan

Within minutes thereafter, the PM on a live TV channel announced that he had advised the President of Pakistan ("**the President**") to dissolve the National Assembly and the same within no time was followed by the dissolution of National Assembly by the President. A notification was also issued by the Cabinet Division stating that the PM has ceased to hold the office. The Hon'ble Chief Justice of Pakistan took SUO MOTU notice of the matter and the same was fixed before this Five-Members bench. Notices were issued to all the concerned.

3. The Attorney-General for Pakistan and the learned counsel for the Pakistan Tehreek-e-Insaf, PTI, both argued that under Article 69 of the Constitution this Court cannot inquire into any proceedings of Parliament. Further argued that the resolution of vote of no confidence was motivated by a Foreign State interested in the regime change in Pakistan; the PM, Speaker, Deputy Speaker and the Federal Minister while relying upon a letter / communication allegedly received from a Foreign state correctly exercised their respective constitutional powers. Hence, this Court has no

jurisdiction to call in question any such constitutional action of the president, the PM, Speaker, Deputy Speaker

4. The learned Counsel for the other political parties made almost similar submission by arguing that the opposition parties individually started announcing in January 2022 that they were planning to move a vote of no confidence against the PM; the opposition parties jointly endorsed the move in late February 2022; the alleged letter / communication was allegedly received by the PM on 07.03.2022 and after 19 days on 27.03.2022 the PM waved the letter during a mass meeting in Islamabad by presenting it a Foreign conspiracy / threat against him. Further, the opposition parties demanded that said letter / communication be presented before the Parliament but the same was not presented. The PM cannot continue in office as he does not hold majority of MNAs.

5. We have heard this matter for a couple of days including the learned Attorney-General and the learned counsel for the Pakistan Tehreek-e-Insaf, PTI and other political parties.

6. No doubt, the validity of the proceedings in the National Assembly and its sovereignty is protected by the Constitution. The clause (1) of Article 69 provides that the validity of any proceedings in the Parliament shall not be called in question on the ground of any irregularity of procedure whereas clause (2) of Article 69 provides that no officer or Member of the Parliament in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in the Parliament shall be subject to the jurisdiction of any court in respect of any such exercise of power by him. The issue as to what are, and what are not, the internal proceedings of the Parliament, which are beyond the pale of jurisdiction of the Courts has been dilated upon by this Courts in the past on many occasions. It would not be out of place to observe that Article 69 of the Constitution however does not place a complete bar on the jurisdiction of this Court. The actions by the Speaker, if based in violation of existing rules or the discretion so exercised by him affecting the smooth running of the functions of the House is, prima facie, in violation of judicious norms, cannot be given a protecting blanket of Article 69 of the Constitution. Reference here can be made to the case of Muhammad Azhar Siddiqui v. Federation of Pakistan (PLD 2012 SC 774).

7. It is a matter of record that the resolution against the PM was submitted on 8th March, 2022 by a large number of the MNAs well beyond the prescribed twenty per centum of the total membership of the National Assembly as required under Article 95(1). Since, the resolution was declared admissible by the Speaker, then the Speaker under Article 95(2) was under constitutional duty/responsibility to hold voting thereon within the time frame prescribed therein that, "*a resolution shall not be voted upon before the expiration of three days, or later than seven days, from the day on which such resolution is moved in the National Assembly*". Meaning thereby such a resolution should have been voted upon between three and seven days but the Speaker for no reason delayed the voting thereon and finally rejected the resolution on the question of inadmissibility which is alien to the Constitution. Once the leave to move the resolution is granted then that resolution has to be voted upon. The deputy Speaker in rejecting the resolution exercised a jurisdiction not so vested in him and his such unilateral act was unconstitutional and without lawful authority. Once the matter was fixed for voting, then the Speaker had no power and lawful authority to avoid voting or reject the resolution without voting. This alone is an act which is ultra vires the Constitution calling for interference by this Court.

8. The Speaker in a Parliamentary form of Government like us holds an office of highest distinction and has the sole responsibility cast on him of maintaining the prestige and the dignity of the House and its members. The Speaker enjoys a very high status and position of great respect and esteem in the parliamentary traditions. He, being the very embodiment of propriety and impartiality, has been assigned the function to regulate the procedure or the conduct of business, or for maintaining order in the Parliament. The Speaker enjoys a pivotal position which is and has been held by people of outstanding ability and impartiality. It may be noted that an elected member of the Assembly when elected as a Speaker, he ought to be neutral in the discharge of his duty and function and ought to be above politics. (See Mirza Tahir Beg v. Syed Kausar Ali Shah and Others (PLD 1976 SC 504)). While deciding any matter in his competence, the Speaker shall not be influenced by anyone, including the party to which he is affiliated. While portraying the entire episode notionally in our minds would reflect that the

conduct of the Deputy Speaker throughout remained very partisan, manuring to undo the resolution. The conduct so reflected by the Deputy Speaker is unbecoming of such a prestigious position of the House of the legislators. It is again for the Parliamentarians to decide how to stop such a biased and partial act in future by a person holding the prestigious position like Speaker/Deputy Speaker.

9. Moreover, the Preamble/Objectives Resolution of the Constitution, which is a "substantive part of the Constitution and shall have effect accordingly" (Article 2A of the Constitution), mandates that the people of Pakistan "through the chosen representatives of the people" exercise their powers, and the most important power is the power to vote, but the Deputy Speaker in violation of the Constitution denied them the right to vote. The Speaker has utterly failed to discharge its solemn duty. The Speaker appears to have forgotten or ignored deliberately for certain reasons best known to him that he is required to discharge the duty enjoined upon him under the Constitution. The action of the Speaker rejecting the resolution vide impugned ruling would neither fall within the meaning of term "any proceedings in the Majlis-e-Shoora (Parliament)" used in Article 69, nor such action could be described as an exercise of power by the Speaker of the House regulating the procedure or the conduct of business in the Assembly and, therefore, in my opinion, no question of immunity for such an action can arise under Article 69 of the Constitution. The impugned ruling as such was a nullity in the eye of law, worthy of no credence.

10. Adverting to the other aspect of the matter that on 03.04.2022, the session was presided over by the Deputy Speaker without any explanation why the Speaker did not preside over. This act of both the Speaker as well as the Deputy Speaker is against the provisions of Article 53(3), which contemplates that, "*when the office of Speaker is **vacant**, or the Speaker is **absent** or is **unable to perform his functions due to any cause**, the Deputy Speaker shall act as Speaker, and if, at that time, the Deputy Speaker is also absent or is unable to act as Speaker due to any cause, such member as may be determined by the rules of procedure of the Assembly shall preside at the meeting of the Assembly*". The record shows that the Deputy Speaker read out the impugned ruling in the name of the Speaker as the same was also signed by the Speaker on the same day. Meaning thereby, on the day when the Deputy Speaker presided over the

session of the House and read out the impugned ruling, the office of the Speaker was neither "vacant" nor was the Speaker "absent" or "unable to perform his functions". Even no explanation in this regard was placed on record subsequently by the Speaker or Deputy Speaker. For the foregoing reason, I would say without any hesitation that the Speaker and the Deputy Speaker had shown sheer disregard for the mandatory provisions of the Constitution. The Deputy Speaker has had no authority to preside over the meeting of the Assembly and to pass impugned ruling on 03.04.2022 rejecting the resolution of vote of no confidence against the PM. The so called ruling of Deputy Speaker is, therefore, without jurisdiction and coram non- judice. This very act of the Deputy Speaker is sufficient enough to reflect his biased and prejudiced mind which in my view is against the norms and dignity of the chair of the Speaker. This very act, alone, is sufficient to annul the so called ruling which otherwise also has no legal sanctity.

11. Since the impugned ruling is found null and void and of no legal effect, the resolution would be deemed pending before the National Assembly. The PM would continue to suffer from disability under Explanation of Article 58(1) to advise dissolution of National Assembly which states that once a "resolution for a vote of no confidence has been given in the National Assembly" against the PM he could no longer advise the President to dissolve the National Assembly under Article 58(1) of the Constitution. Therefore, any order by the President to dissolve the National Assembly on the advice of such a PM is also declared as void.

12. Before parting with this order, it has been observed that the Constitution opens by stating that the exercise of authority "is a sacred trust" and can only be exercised through "the chosen representatives of the people." However, this sacred trust was violated amongst others by the President, PM, the Speaker, the Deputy Speaker and the Law Minister as the elected representatives of the people were prevented from voting on the resolution and for such blatant transgression of the Constitution there must be consequences and the law must take its course. It is also found that the series of afore-noted acts right from the rejection of resolution by the Deputy Speaker till the dissolution of National Assembly by the President were not performed in the ordinary course of business but the same were result of premeditation and deliberations in order to

defeat the resolution of vote of no confidence while playing fraud on the Constitution. To my understanding, Article 5 of the Constitution, which mandates "obedience to the Constitution," was cited to violate the Constitution. However, whether the stated acts attract Article 6 of the Constitution is also left open to be determined by the Parliamentarians as to whether they leave open the doors for such unconstitutional acts or take suitable measures to stop such like mess in future.

13. Above are the reasons of our short order supra, which is reproduced hereunder for facility of reference:

"For detailed reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise, these matters are disposed of in the following terms:

1. The ruling of the Deputy Speaker of the National Assembly ("Assembly") given on the floor of the House on 03.04.2022 ("Ruling") in relation to the resolution for a vote of no-confidence against the Prime Minister under Article 95 of the Constitution ("Resolution") (for which notice had been given by the requisite number of members of the Assembly on 08.03.2022, and in relation to which leave was granted to move the Resolution on 28.03.2022), and the detailed reasons for the Ruling (released subsequently and concurred with by the Speaker) are declared to be contrary to the Constitution and the law and of no legal effect, and the same are hereby set aside.

2. In consequence of the foregoing, it is declared that the Resolution was pending and subsisting at all times and continues to so remain pending and subsisting.

3. In consequence of the foregoing, it is declared that at all material times the Prime Minister was under the bar imposed by the Explanation to clause (1) of Article 58 of the Constitution and continues to remain so restricted. He could not therefore have at any time advised the President to dissolve the Assembly as contemplated by clause (1) of Article 58.

4. In consequence of the foregoing, it is declared that the advice tendered by the Prime Minister on or about 03.04.2022 to the President to dissolve the Assembly was contrary to the Constitution and of no legal effect.

5. In consequence of the foregoing, it is declared that the Order of the President issued on or about 03.04.2022 dissolving the Assembly was contrary to the Constitution and of no legal effect, and it is hereby set aside. It is further declared that the Assembly was in existence at all times, and continues to remain and be so.

6. In consequence of the foregoing, it is declared that all actions, acts or proceedings initiated, done or taken

by reason of, or to give effect to, the aforementioned Order of the President and/or for purposes of holding a General Election to elect a new Assembly, including but not limited to the appointment of a care-taker Prime Minister and Cabinet are of no legal effect and are hereby quashed.

7. In consequence of the foregoing, it is declared that the Prime Minister and Federal Ministers, Ministers of State, Advisers, etc stand restored to their respective offices as on 03.04.2022.

8. It is declared that the Assembly was at all times, and continues to remain, in session as summoned by the Speaker on 20.03.2022 for 25.03.2022 ("Session"), on the requisition moved by the requisite number of members of the Assembly on 08.03.2022 in terms of clause (3) of Article 54 of the Constitution. Any prorogation of the Assembly by the Speaker prior to its dissolution in terms as stated above is declared to be of no legal effect and is set aside.

9. The Speaker is under a duty to summon and hold a sitting of the Assembly in the present Session, and shall do so immediately and in any case not later than 10:30 a.m. on Saturday 09.04.2022, to conduct the business of the House as per the Orders of the Day that had been issued for 03.04.2022 and in terms as stated in, and required by, Article 95 of the Constitution read with Rule 37 of the Rules of Procedure and Conduct of Business in the National Assembly Rules, 2007 ("Rules").

10. The Speaker shall not, in exercise of his powers under clause (3) Article 54 of the Constitution, prorogue the Assembly and bring the Session to an end, except as follows:

- a. If the Resolution is not passed by the requisite majority (i.e., the no-confidence resolution is defeated), then at any time thereafter;*
- b. If the Resolution is passed by the requisite majority (i.e., the no-confidence resolution is successful), then at any time once a Prime Minister is elected in terms of Article 91 of the Constitution read with Rule 32 of the Rules and enters upon his office.*

11. If the Resolution is passed by the requisite majority (i.e., the no-confidence resolution is successful) then the Assembly shall forthwith, and in its present Session, proceed to elect a Prime Minister in terms of Article 91 of the Constitution read with Rule 32 of the Rules and all other enabling provisions and powers in this behalf and the Speaker and all other persons, including the Federal Government, are under a duty to ensure that the orders and directions hereby given are speedily complied with and given effect to.

12. The assurance given by the learned Attorney General on behalf of the Federal Government in C.P. 2/2022 on 21.03.2022 and incorporated in the order made in that matter on the said date shall apply as the order of the Court: the Federal Government shall not in

any manner hinder or obstruct, or interfere with, any members of the National Assembly who wish to attend the session summoned as above, and to participate in, and cast their votes, on the no confidence resolution. It is further directed that this order of the Court shall apply both in relation to the voting on the Resolution and (if such be the case) in relation to the election of a Prime Minister thereafter. It is however clarified that nothing in this Short Order shall affect the operation of Article 63A of the Constitution and consequences thereof in relation to any member of the Assembly if he votes on the Resolution or (if such be the case) the election of a Prime Minister thereafter in such manner as is tantamount to his defection from the political party to which he belongs within the meaning of the said Article.

13. The order of the Court made in S.M.C. 1/2022 on 03.04.2022 to the following effect, i.e., "Any order by the Prime Minister and the President shall be subject to the order of this Court" shall continue to be operative and remain in the field, subject to this amplification that it shall apply also to the Speaker till the aforesaid actions are completed."

(Mazhar Alam Khan Miankhel)

Judge

Approved for reporting.