ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 2758/2023

Bushra Imran Khan
Versus
Federation of Pakistan through Secretary Ministry of Interior and Secretary Ministry of Defence & others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(11)	29.04.2024	Sardar Shahbaz Khosa and Ms. Suzain Jehan Khan, Advocates for the petitioner. Mr. Ahmed Junaid, State Counsel. Mr. Mansoor Awan, Attorney General for Pakistan, Barrister Munawar Iqbal Duggal, Additional Attorney General, and Mr. Aqeel Akhtar Raja, Assistant Attorney General. Mr. Afzal Khan and Mr. Faisal-bin-Khurshid, Advocates alongwith Mr. Muhammad Khurram Siddiqui, Director General (L&R), Mr. Muhammad Naeem Ashraf, Director (Litigation), Ch. Adil Javed, Assistant Director (Litigation), and Syeda Itrat Batool, Law Officer, PTA. Mr. Faisal Siddiqi, ASC, for PBC. Mr. Aitzaz Ahsan, ASC/Amicus, along with Barrister Zunaira Fayyaz and Barrister Qaiser Nawaz, Advocates. Mr. Ali Shahryar, Advocate for respondents No.2 and 3 in Writ Petition No.1805 of 2023. Mr. Muhammad Waqas Rasool, Deputy Director (Law), and Mr. Imran Haider, Assistant Director, FIA. Lt. Col. Zahid Hussain, Law Officer, Ministry of Defence. Mr. Amjad Iqbal, Deputy Director (Litigation), Intelligence Bureau. Mr. Tahir Kazim, Law Officer, IGP's office alongwith Mr. Tanveer Pasha, Sub-Inspector, Police Station Kohsar, Islamabad. Mr. Asif Bashir Chaudhry, Secretary RIUJ, Member FEC, PFUJ.

Objection Case No. 8487, 8495, 8497, 8513 & 8548 of 2024

The office objections are overruled. Let the applications be numbered and fixed before the Court for today.

C.Ms No. 1341, 1342, 1344, 1345 & 1346 of 2024.

This order will decide C.Ms No. 1341, 1343 & 1344 of 2024 filed in above titled Writ Petition and C.Ms No. 1345 and 1346 of 2024 in *Mian Najam-us-Saqib Vs. Federation of Pakistan (Writ Petition No. 1805 of 2023*). Through these applications, the Federal Investigation Agency (FIA), the Intelligence Bureau (IB), Pakistan Telecommunication Authority (PTA) and Pakistan Electronic Media Regulatory Authority (PEMRA) have simultaneously sought the recusal of the Presiding Judge from adjudication of writ petitions 1805/2023 and 2758/2023.

Grounds in the recusal applications

2. The common ground in the applications filed on behalf of FIA, IB and PTA is that the Presiding Judge is one of the six Judges of this Court, who authored a letter dated 25.03.2024 **("Letter")**, addressed to members of the Supreme Judicial Council, in which "serious allegations in respect of operatives of agencies, especially ISI" were made. What is interesting in terms of CM No. 1343 of 2024 filed in W.P No. 2758/2023 by the FIA and CM 1345 of 2024 filed by IB in W.P No. 1805/2023 by the IB, is that text in various paragraphs of the two applications, filed obviously by two separate entities independent of one another, is identical, including a quotation of Lord Denning on the matter of bias. The application filed by PTA in addition waving the Letter as a ground for recusal also states that the Presiding Judge, in his capacity as a lawyer, in the past represented PTA as well as telecom operators in various cases. It has further been

contended that the law firm AJURIS, Advocates and Corporate Counsel **("AJURIS")**, of which the Presiding Judge was a partner prior to being appointed as Judge, acts as counsel in a case involving the issuance of commencement certificate, which has direct nexus with the subject-matter of the instant petition. In the application filed by PEMRA, the ground for transfer of the case is that the subject matter of the instant petitions overlaps with the subject-matter in ***Airways Media Pvt. Ltd. Vs. Pakistan Electronic Media Regulatory Authority (FAO No. 129/2019)***, which was decided by Bench-II of this Court by judgment dated 22.12.2021, and propriety therefore demands that the instant petition be heard by some other bench.

Arguments of the learned counsels for the applicants

3. The Court asked the learned counsel for PEMRA as to how the judgment issued by another bench of this Court formed a basis for seeking transfer of the instant matter to the bench that had issued such judgment. Learned counsel for PEMRA was at a loss to respond with any legal argument. The Court asked the learned counsel for PEMRA as to why the principle laid down in ***Multiline Associates vs. Ardeshir Cowasjee (PLD 1995 SC 423)*** would not apply in the instant matter and why would there be any apprehension of conflicting judgments, when the judgment rendered in ***Airways Media*** would bind this Court under the principles of applying precedents enumerated in ***Multiline Associates.*** The learned Counsel for PEMRA had no response. He merely stated that the object of the application was to bring the decision in ***Airways Media*** to the attention of the Court.

4. As a matter of routine practice, the benches of a High Court continue to hear cases involving similar subject-matter and similar questions of law simultaneously. It is only where a particular order is under challenge in proceedings pending in different benches that the cases are consolidated to avoid conflicting judgments. However, merely because a question of law has been decided by another bench of the court in an earlier proceeding can never be a valid ground for transfer of a subsequent case to such bench. While deciding the case the High Court follows its precedents in terms of the law laid down in ***Multiline Associates***. In a case where a bench of equal size disagrees with an earlier judgment of the Court issued by a bench of equal size and the bench seized of the matter has a different view on the question of law, the proper course is to seek the constitution of a larger bench that is not bound by the precedent in question due to its size. Instead of filing an application seeking recusal, PEMRA could simply refer to ***Airways Media*** while making its arguments. Given that PEMRA joined hands with FIA, IB and PTA in filing this application, it appears that the application, which is devoid of merit, has not been filed in good faith. There is no case with overlapping subject-matter that is pending before Bench-II of this Court that issued a judgment in the matter of ***Airways Media***. Consequently, there is no basis for filing an application to seek the transfer of the instant matter to another bench.

5. Learned Additional Attorney General representing FIA has reiterated the grounds in FIA's recusal application. He was asked to read the content of the Letter on the basis of

which recusal was being sought and was asked to identify the part of the Letter that related to FIA. He read through the Letter and submitted that FIA found no mention in the said Letter, but that a general reference had been made to intelligence agencies. He was then asked if FIA was an intelligence agency, to which he responded in the negative and stated that FIA was an investigation agency. He was then asked whether FIA had any connection with the incidents mentioned in the Letter that referred to purported actions of ISI. The learned Additional Attorney General once again responded in the negative. He was asked what possible concern could FIA have with the Letter and how could the Letter form a basis for a motion by FIA seeking recusal of the Presiding Judge in the instant matters. He had no response. He was then asked as to who had authorized the filing of the application and whether FIA was acting as a proxy for ISI, which was not a party in the petitions pending before this Court. His answer was in the negative. He was unable to satisfy the Court as to why FIA would take offense to the Letter or any references therein to purported actions of ISI or why FIA felt that the Presiding Judge was disqualified from hearing the instant matter in which FIA, as per its own account, was inquiring into the allegation made by the petitioners pursuant to provisions of Prevention of Electronic Crimes Act, 2016 **("PECA")**.

6. Learned Additional Attorney General also made arguments on behalf of IB, which were similar to those made on behalf of FIA. When asked if there was any particular reference to IB in the Letter on the basis of which the recusal

of the Presiding Judge was being sought. His answer was in the negative. He, however, stated that a general reference to operatives of intelligence agencies and members of the executive had been made in the Letter. He was asked if it was IB's position that the Presiding Judge (and the other five judges who authored the Letter) ought to be deemed disqualified from hearing all cases involving the executive (i.e. the Federal Government). The learned Additional Attorney General was at a loss to come up with a coherent response. He was asked if IB was involved in any of the incidents mentioned in the Letter. He responded in the negative. He was asked if IB had no concern with the incidents mentioned in the Letter, why would it perceive that the Presiding Judge had any bias against the IB? The learned Additional Attorney General has no satisfactory response. He was then asked as to who had authorized the application, the content and grounds of which were identical to the application filed by FIA, and whether IB was acting as a proxy for ISI who is seeking recusal of the Presiding Judge, he sought assistance from Mr. Amjad Iqbal, Deputy Director, IB, who had signed the affidavit authorizing the application. Mr. Amjad Iqbal was asked as to who instructed and authorized him to file the application. After some hesitation, he submitted that Mr. Tariq Mehmood, Joint Director of IB, had instructed him to file the application. The learned Additional Attorney General was then asked to explain the framework within which IB works and who, in view of the law and IB's organizational structure, is vested with authority to initiate litigation and/or file applications before the court. He

undertook to file a report for such purpose. Let him file such report within a period of 2 weeks. Let Mr. Tariq Mehmood, Joint Director of IB, also appear before the court on the next date of hearing and explain who had authorized him to instruct that the application be filed and/or under what legal authority had he issued such instruction.

7. Learned counsel for PTA was asked if he had seen the order of this court dated 14.03.2024, which had been referred to in the application for recusal, and which had documented the arguments of Mr. Irfan Qadir, ASC, who represented PTA in the last hearing and had objected to the Presiding Judge adjudicating the matter on the basis that prior to being appointed a judge, the Presiding Judge had represented PTA as well as telecom operators who were all respondents in these proceedings. He answered in the negative. He submitted that as he had been appointed recently and was unable to peruse the order of this Court dated 14.3.2024. He was asked to read paras 1 and 11 of order dated 14.3.2024, where the objection raised by PTA on the basis of prior work of the Presiding Judge in the telecom sector was recorded, which objection was then addressed in para 11 of the order. He was then asked whether PTA had filed any appeal against such order. He responded in the negative. When asked as to how a fresh application on a ground that had been raised and rejected by the court was maintainable, he had no response.

8. On the issue of AJURIS representing clients in the telecom industry and seeking commencement certificates on their part and such representation being a ground for recusal

of the Presiding Judge as contended by PTA, this Court sought the assistance of the learned Attorney General for Pakistan, who was present in the Court to represent the Federation. The Court informed him that while the Presiding Judge was a partner in AJURIS while practicing as a lawyer, the Presiding Judge had no concern with AJURIS since his appointment as Judge in December 2020. The learned Attorney General volunteered that he was the senior partner of AJURIS, presently on leave while serving as Attorney General for Pakistan. He had checked with the active partners of AJURIS and had confirmed that AJURIS was pursuing no cases that had any similarity with or whose subject-matter overlapped with the subject matter in the instant cases. He submitted that the ground for recusal raised by PTA was not just legally invalid, but was also based on factually incorrect information.

9. The learned counsel for PTA was asked as to what correlation did PTA have with ISI or what interest or concern did PTA have with the Letter, in view of which it was seeking the recusal of the Presiding Judge, especially given that PTA was an independent statutory authority and was not an intelligence agency. The learned counsel for PTA had no response to the question.

Doctrinal basis for seeking the recusal of a Judge

10. Before we address the grounds raised in the applications, let us first consider the doctrinal basis for seeking recusal of a judge and the relevant jurisprudence on the subject that has evolved in Pakistan.

11. It is a settled proposition that Judges of the High Court (and the Supreme Court) are under an obligation to determine their own disqualification to hear a case as keepers of their conscience. There are two sources of law that provide guidelines for making such determination. The first is the legal rules that flow from the Constitution itself i.e. the oath of office of Judges prescribed by the Constitution and the code of conduct for judges prescribed by the Supreme Judicial Council and to be followed by the judges in view of Article 209(8) of the Constitution. The second source is the principles of equity essentially encapsulated by the maxims that (i) no one can be a judge in his own cause, and (ii) justice is not only to be done, but also to be seen to be done (which principle is also reiterated by the code of conduct for Judges).

12. A judge of the High Court swears an oath prescribed in terms of Article 194 of the Constitution and states, *inter alia*, that the judge will "*abide by the code of conduct issued by the Supreme Judicial Council*", not allow "*personal interest*" to influence "*official conduct*" and "*official decisions*", and that he/she will "*do right to all manner of people, without fear or favor, affection or ill-will*". Article IV of the Code of Conduct to be observed by Judges of the Supreme Court of Pakistan and the High Courts of Pakistan **("Code of Conduct")** provides guidance for recusal and states the following:

> *A Judge must decline resolutely to act in a case involving his own interest, including those of persons whom he regards and treats as near relatives or close friend.*

> *A Judge must rigidly refrain from entering into or continuing any business dealing, howsoever unimportant it may be, with any party to a case before him. Should the dealing be unavoidable, he must discontinue his connection with the case forthwith. A judge must refuse to deal with any case in which he has a connection with one party or its lawyer more than the other, or even with both parties and their lawyers.*
>
> *To ensure that justice is not only done, but is also seen to be done, a Judge must avoid all possibility of his opinion or action in any case being swayed by any consideration of personal advantage, either direct or indirect.*

13. Before we proceed to consider the principles guiding recusal as laid down by precedents, a few observations are warranted in view of the textual basis for recusal reproduced above. One, the Constitutional oath presents the concept of "personal interest" in contradistinction to "official conduct" and "official decisions". The personal interest of the individual occupying the office of a Judge can never be confused with the duty of a Judge to discharge the power and functions of his office "*without fear or favor, affection or ill-will*". This is both obvious and commonsensical. A Judge doesn't just have an interest in upholding the Constitution and the law, but has a duty to do so. This must never be misinterpreted as "personal interest".

14. Two, the duty to dispense justice "*without fear or favor, affection or ill-will*" focuses on the parties over whose interests he/she sits in judgment. The oath speaks of doing right "*to all manner of people*". And Article IV stipulates examples, in an explicatory form, of the persons or parties whose cases ought not be heard by a judge, including, his/her near relatives and close friends, parties he/she may

have business dealings with, and parties (and/or their counsel) that he/she may be partial toward due to a personal connection. The guidance on recusal thus focusses on litigating parties in the context of the Judge's personal connection with them and not the subject-matter of the case being adjudicated. It is the identity of the party that is central to the question of recusal, whether in case of conflict of interest where the Judge is alleged to have an interest in the outcome of the case in favor of one party, or in case of bias where the Judge is deemed to have a state of mind adverse to a party. The subject-matter of a case or the views of a Judge in relation to such subject-matter, whether expressed in past judgments or otherwise, is never a ground for recusal.

15. And three, the Constitution and the law do not vest in a litigating party the right to demand the recusal of a Judge, but instead place the obligation of seeking recusal on the Judge. This is why it has been held that a Judge is the keeper of his/her own conscience. The need to recuse flows from the consciousness and the conscience of the Judge. It is he/she who is best placed to know who is a near relative or a close friend or that he/she may be partial toward a party or a lawyer, even without such matters having been disclosed or being common knowledge. The concept of self-recusal is rooted in the assumption that a Judge, as a public official, will always act in good faith and recuse himself/herself even when no one knows that grounds for recusal exist.

16. The grounds for recusal are sometimes articulated in terms of the bias/partiality of a Judge and at times in terms of conflict of interest. It was explained by the Supreme Court

recently in ***Abid Shahid Zuberi vs. Federation of Pakistan*** **(2023 SCMR 2028)** that "*conflict of interest and bias are indeed two distinct grounds on which a party may seek the recusal of a Judge from hearing a case. Whilst conflict of interest is related to the Judge's interest in the subject matter of a particular case, bias is concerned with his state of mind and his feelings towards the parties appearing before him*." Whether one speaks of bias (i.e. Judge's state of mind) or conflict of interest (i.e. Judge's personal or pecuniary interest lined to the outcome of the matter), the underlying concern is the same: the inability of a judge to be a neutral arbiter of the law in view of his/her partiality toward a party whose claim he/she is adjudicating or the Judge's personal interest in the outcome of the matter. In a case where the Judge has a personal or pecuniary interest in the outcome of the matter, his/her disqualification is automatic and he/she has no discretion to decide otherwise. In a case where his/her connection with a party forms the basis for recusal, it is for the Judge to determine whether such connection exists. Jurisprudence on the matter enumerates the tests to be applied by the Judge to determine whether or not he/she ought to hear a case. Such cases fall within the domain of conflict of interest. Where the ground for recusal is bias, it is once again for the Judge to determine whether a case for recusal is made out, in view of the facts presented before him/her.

Definition of Bias

17. Bias is defined as a mental attitude toward a particular individual or a group of individuals as a result of

personal hostility or prejudice. In ***Asif Ali Zardari and another v. The State*** ***(PLD 2001 Supreme Court 568)***, the Supreme Court cited Corpus Juris Secundum (Volume X pp. 354 and 355), which provides that bias is *"a condition of mind; and has been referred, not to views entertained regarding a particular subject matter, but to mental attitude or disposition toward a particular person, and to cover all varieties of personal hostility or prejudice against him*". Thus, the disposition of the judge towards a particular litigating party rather than a disposition towards a particular view-point on a subject matter is referred to as bias.

18. This notion was reiterated by in ***Muzaffar Hussain v. The Superintendent of Police, District Sialkot*** ***(2002 PLC (C.S.) 442)***, wherein the Black's Law Dictionary was cited for the proposition that bias is a *"disposition of the Judge towards a party to the litigation and not to any views that he may entertain regarding the subject-matter involved."* It is sometimes mistakenly assumed that a judge must hold no views on matters that affect the polity. The consciousness of a judge, like any other person, is shaped by his/her circumstances, education, experiences etc. It is both delusional and counterproductive to expect Judges to be viewpoint neutral. To be viewpoint neutral would equally mean that Judges must have no sense of right and wrong.

19. For a judge to be viewpoint neutral or amoral would be a serious disqualification. The Code of Conduct is laced with the obligation of a judge to be a moral being. Just as an example, it requires a judge to *"present before the public an image of justice of the nation"*. The point of clarification here

is that a Judge is duty-bound to makes decisions with regard to right and wrong in accordance with the Constitution and the law. And to the extent that his/her personal morality comes in conflict with the morality of the law, the latter must trump the former. A Judge is never neutral when it comes to right and wrong as defined by the law and the Constitution. He/she is neutral only in terms of applying notions of right and wrong to the parties before the court.

20. It is thus that the notion of bias, for purposes of recusal, focusses on the identity of parties and not the subject-matter of the case. For example, it cannot be argued that a Judge is biased because he/she believes in the supremacy of the Constitution and abhors constitutional deviance, including imposition of martial law. A Judge is duty bound to uphold and protect the Constitution and cannot be indifferent to whether or not the Constitution lives or dies. Parliamentary democracy and government through chosen representatives of people is a salient feature of the Constitution. A Judge can therefore not be apathetic toward the principle of civilian control of the military as explicitly prescribed by Article 243 of the Constitution. The Constitution mandates independence of the Judiciary within a scheme of trichotomy of powers. A Judge cannot be indifferent toward these foundational constitutional principles. He/she has a duty to protect, defend and uphold them.

Personal /Pecuniary Interest and Bias

21. No man can judge his own case (nemo judgex in re sua) is a settled principle of fairness. A judge cannot adjudicate a case that involves his personal interest, even if

he has the training and wherewithal to decide the matter unaffected by such interest. This is because justice must not only be done but must also be seen to be done. In ***Anwar and another v. The Crown (PLD 1955 FC 185)*** it was held that *"no Judge can be a Judge in his own cause, or in a case in which he is personally interested."* It was held in ***Asif Ali Zardari Vs. The State*** (***PLD 2001 SC 56***8) that, *"a judge may have a bias in the subject-matter which means that he is himself a party or has direct connection with the litigation".*

22. If a Judge has a pecuniary interest in the matter before him, he/she stands automatically disqualified from hearing the case. In ***Anwar and another v. The Crown (PLD 1955 FC 185)*** the Federal Court explained that, *"pecuniary interest in the cause, however slight, will disqualify the Judge, even though it is not proved that the decision has in fact been affected by reason of such interest."* In ***Mr. Zulfiqar Ali Bhutto and 3 others v. The State (PLD 1979 SC 38)*** the Supreme Court held that "*pecuniary or proprietary interest … however small may be, is operative as a disqualification in the Judge*". ***Ms. Benazir Bhutto v. The President of Pakistan (1992 SCMR 140)*** reaffirmed the judicial consensus that *"a Judge having pecuniary or proprietary interest in the subject-matter of a case before him cannot hear the same"*.

23. Personal bias toward or against one party is sufficient for the finding of bias. In ***Anwar v. The Crown*** the Federal Court noted that "*a judge may have a personal bias towards a party owing to [a] relationship and the like [sic] or he may be personally hostile to a party*". In ***Federal***

Government v. General (R) Parvez Musharraf ***(2014 PCr.LJ 684***) the Supreme Court held that "*a personal friendship or animosity between [a] Judge and any member of the public*," who is before the Judge in a case, constitutes a sufficient basis for a finding of bias.

24. Disqualification for bias can also flow from clear exhibition of animosity by a Judge during adjudicatory proceedings. In ***Federal Land Commission and another v. Sardar Ashiq Muhammad Khan Mazarin and 37 others (1985 SCMR 317)*** in view of (1) substituted notice to respondents without justification, (2) inadequate nature of the notices that did not contain charges, (3) expedited nature of the proceedings displaying 'unholy haste', (4) not affording sufficient opportunity to one of the respondents to defend his case since he was undergoing treating in London, and (5) disregard for contentions of bias repeatedly made before the Chairman, it was found that proceedings were not held in a fair and impartial manner and were biased.

25. Gross improprieties in conducting the proceedings in favor of one party can also result in the finding of bias. In ***Asif Ali Zardari vs. The State*** ***(PLD 2001 SC 568)*** bias was inferred from, among other things, (1) the Judge getting a diplomatic visa without being so eligible, (2) not recording a statement of Benazir Bhutto even when she was available, (3) the transfer of Reference against Asif Ali Zardari from Lahore to Rawalpindi, and then sending a judge from Lahore to Rawalpindi, (4) the formation of a commission and sending the commission to Switzerland for ascertaining certain

documents, and (5) not allowing the defendant to appropriately defend its position.

26. It must be pointed out, as a general matter and without articulating a strict rule, that where the claim for bias is brought on the basis of facts that are external to the adjudicatory process (i.e. personal or proprietary interest of the Judge or bias due to personal relationship between the Judge and a party), such claim properly lies before the Judge adjudicating the matter. Where, on the other hand, the claim for bias is based on conduct of the Judge, including exhibition of animosity and/or gross procedural improprieties during trial etc., such claim will more often than not be a matter to be decided in appeal.

Recusal on the basis of prior role of the Judge

27. A Judge who as a former prosecutor has looked at the file of the accused and has decided that further prosecution is warranted, is disqualified as a judge from hearing the same matter on the basis of bias (see ***Ghulam Rasul and others v. Crown (PLD 1951 F.C. 62)***). A Judge who has had an attorney-client relationship with a party, and during such engagement has became privy to certain information that forms the subject-matter of the case before him/her as a Judge, or where as a lawyer he/she issued a legal opinion to a party in relation to the subject-matter that has come up for adjudication before him/her, the Judge must excuse himself from sitting in an adjudicatory capacity over the case where the party in question is involved.

28. The basis for recusal of a Judge in view of his role prior to being appointed a Judge is covered in the Code of Conduct. In a case where by virtue of a prior attorney-client relationship, a Judge has developed a personal connection with a party, he ought not hear such party's case. In other words, where a Judge develops a close personal relationship with a former client or where in his capacity as attorney, he has had access to confidential information that is germane to the controversy in a case, the Judge ought to recuse himself to ensure that justice is seen to be done in the matter. This rule, however, is not strictly applicable in case of institutional clients unless the Judge has a close personal relation with the owners or management of the institutional client, individuals within which have a personal interest in the outcome of the matter.

29. In Pakistan the office of the Attorney General and/or Advocate General has remained a path to being appointed a Judge. An attorney who has worked for the government in such office cannot be seen as having disqualified himself from hearing cases for or against the government that has employed him/her in the past. The same principle applies to large institutional clients. Where a Judge doesn't have a personal relationship with individuals who control a former institutional client or where he hasn't represented such party in relation to the case in question, no question of bias arises. Similarly, the Code of Conduct doesn't recognize subject-matter bias: a lawyer who has worked on matters involving human rights or civil liberties cannot be alleged to be biased in favor of such subject-matters. The fact that a Judge, in his

erstwhile capacity as a lawyer had articulated his opinion on a point of law, doesn't disqualify him from adjudicating a matter where such question of law arises (unless of course the party in question was a client to whom such opinion was given), just as a Judge isn't disqualified from hearing a case merely because the question of law involved has been adjudicated by him/her in a prior case.

30. A Judge having rendered a decision against one of the parties in prior proceedings is an insufficient basis for a finding of bias. In ***Islamic Republic of Pakistan v. Abdul Wali Khan*** ***(PLD 1976 SC 57)*** it was held that previous decision of the Judge regarding detention of ANP leaders did not disqualify the Judge from determining whether or not ANP was to be banned under section 6 of the Political Parties Act, 1962. In ***Muhammad Asif v. The State and others*** ***(PLD 2014 Lahore 543)***, Lahore High Court clarified that observations made at the time of bail do not constitute adequate grounds for transfer of the case on grounds of bias.

31. A Judge getting the law wrong is not sufficient basis for a finding of bias. Judges are human beings and can make mistakes. Such mistakes are to be corrected in appellate proceedings. As stated above, a Judge definitively declaring his position on a matter of law in an earlier proceeding is not a basis to seek disqualification of the judge on grounds of bias. It was held in ***Syed Tahir Hussain Mahmoodi and 7 others v. Tayyab and 9 others*** (***PLD 2009 Karachi 176)*** that "*a judge is not disqualified to hear a case simply because*

he had expressed his opinion on similar questions of fact and law while deciding a similar case earlier." (Also see ***Muzaffar Hussain v. The Superintendent of Police, District Sialkot*, (2002 PLC (C.S.) 442)**).

The test: "Reasonable Apprehension of Bias" or "Real Likelihood of Bias" ?

32. A review of case law suggests that the courts in Pakistan have applied two different standards in considering the need for recusal: (1) reasonable apprehension of bias, and (2) real likelihood of bias.

33. The reasonable-apprehension-of-bias-test was invoked in ***Ghulam Rasul and others Vs. Crown (PLD 1951 FC 62***). As articulated by the Federal Court, the test suggests that if the conduct of the Judge nurtures a reasonable misgiving in the mind of the accused that he/she would not receive a fair trial, the Judge ought to disqualify himself/herself on grounds of bias. The real-likelihood-of-bias test was, meanwhile, invoked in ***Anwar Vs. Crown (PLD 1955 FC 185)*** in a dissent by Justice Cornelius who relied on *Dimes v. Grand Junction Canal* 3 H L R 759 and *R. v. Rand L R 1 Q B*. 20. Cornelius J, argued in his dissent, that if the judge or his judgment has been held to be biased, the entire record and all the evidence in that case stands tainted. The majority disagreed.

34. In ***Muhammad Ismail Chowdhury***, the Supreme Court found bias because of improprieties during trial, but did not refer to any test. In ***Syed Akhlaque Hussain Vs. Pakistan* (PLD 1969 SC 201)** a Supreme Court judge

alleged that the Chief Justice was personally interested in having a special reference moved against him in the Supreme Court and hence the Chief Justice should have been disqualified from the Bench that inquired into charges against the Supreme Court judge. The Court disagreed and held that *"a real likelihood of bias must be established"*. It noted that "*mere suspicion of bias even if it is not unreasonable is not sufficient to render a decision void*".

35. In ***The President Vs. Justice Shaukat Ali* (PLD 1971 SC 585),** the Court again reiterated the language from ***Akhlaque Hussain*** and held that a real likelihood of bias must be shown, which could not be held to be proved. Similarly, ***Abdul Wali Khan*** held that no bias existed when a Judge had previously rendered a decision against Abdul Wali Khan in a different case, in relation to a different legal question. The Supreme Court reiterated that, "*mere apprehension in the mind of a litigant that he may not get justice such as is based on inferences drawn from circumstantial indications, will not justify the raising of the plea [of bias]*", and that, "*[t]he facts adduced must be such that the conclusion of bias necessarily follows therefrom*".

36. As already discussed above, in ***Sardar Ashiq*** bias was found because of improprieties in the proceedings of the tribunal. In ***Benazir Bhutto*** the Court held that there was no bias and that for "*bias to be established as a matter of fact*", it has to been shown that there is a "*real likelihood of the Judge being biased*". The court did not ask the question whether the conduct of the Judge could reasonable be

perceived to be biased, but whether enough facts were presented, that "a real likelihood of bias" could be established.

37. In ***Asif Ali Zardari Vs. The State*** **(PLD 2001 SC 58**) a 7-member bench of the Supreme Court applied the reasonable-apprehension-of-bias test, borrowing language from ***Anwar Vs. Crown*** **(PLD 1955 FC 185)** to hold that the Judge was biased. The Court held that the question that needed to be addressed was whether in the mind of the litigant there was a reasonable apprehension that he would not get a fair trial. Thus, "*real likelihood*" was seen as the apprehension of a reasonable man apprised of the facts and "*not the suspicion of fools or capricious person*".

38. ***Hussain Ahmad Haroon*** **(2003 SCMR 104)** refers primarily to the "reasonable apprehension" language, mentioning that "*it is to be judged whether a reasonable person in the similar situation would assume the possibility of bias in the mind of the deciding officer*". The Court, in this case as well, found bias in the decisions of Secretary Health, Government of N.W.F.P, (in a situation where aggrieved doctors had been arrested for protesting, and while they were incarcerated, were issued show-cause notices by Secretary Health, and were then egregiously penalized for not responding to the notices).

39. The Supreme Court also looked into the question of bias in ***Gen. (R.) Parvez Musharraf v. Nadeem Ahmed (PLD 2014 SC 585)***. While the Supreme Court held that Chief Justice Iftikhar Muhammad Chaudhry was not

disqualified from hearing the case of PCO Judges, the standard that the court relied on was that of 'reasonable apprehension of bias' rather than 'real likelihood of bias'. Observing that General Parvez Musharraf had had Justice Iftikhar Chaudhry removed and put under house-arrest, the Court nevertheless found that there was nothing to conclude that Justice Iftikhar Chaudhry was biased. In his concurrent opinion, Justice Jawwad S. Khawaja drew a distinction between actual and perceived bias and opined that to allege actual bias, facts need to be pled that showed partiality or animosity.

40. If a request for transfer is made on the basis of bias, the objection has to be raised before the Judge who is said to be biased, who must decide the matter according to his conscience. In ***Zulfiqar Ali Bhutto v. The State*** ***(1977 SCMR 514)*** it was held that, "*at to the question of bias, it is well-established that any objections in this behalf must be raised before the Judge concerned, and ordinarily the matter must be left to him to decide according to his conscience and the circumstances of the case*". (also see ***Benazir Bhutto*** **(1992 SCMR 140)**, ***Mian Muhammad Nawaz Sharif v. Sardar Farooq Ahmad Khan Leghari*** **(PLD 1996 Lahore 92)**).

Personal interest versus bias toward an institution

41. The question of bias toward an institution has not been considered by the Supreme Court of Pakistan. The United States Supreme Court in ***Aetna Life Ins. Co. v. Lavoie, 475 U.S.813 (1968)*** however dealt with the question of bias where, among other things, allegations were

made against a Judge for being against insurance companies. In the said case the trial court in Alabama dealt with a litigation where the insurance claim was partially denied by the insurance company. One of the claims being pursued was a bad-faith refusal to pay a valid claim. The trial court dismissed this claim. The Supreme Court of Alabama remanded the cases holding that recovery under such a claim had not been foreclosed. In the second round of litigation Alabama Supreme Court expanded the scope of the bad-faith refusal claim. The insurance company filed for a rehearing and subsequently discovered that one of the five judges of the Alabama Supreme Court, Justice Embry, had filed two actions in the Circuit Court for Jefferson County, Alabama, against insurance companies. Both those claims alleged bad-faith failure to pay a claim against insurance companies and sought punitive damages.

42. The US Supreme Court first looked at whether Justice Embry had a "*general hostility towards insurance companies that were dilatory in paying claims*". It held that the allegations of bias or prejudice could suffice "*in the most extreme of cases*", and in this case, the allegations "*fall well below that level*":

> "*Appellant suggests that Justice Embry's general frustration with insurance companies reveal a disqualifying bias, but it is likely that many claimants have developed hostile feelings from the frustration in awaiting settlement of insurance claims … Appellant's allegations of bias and prejudice on this general basis, however, are insufficient to establish any constitutional violation*."

The US Supreme Court did, however, find for the insurance company due to the personal interest of Justice Embry, who had ended up receiving damages as a consequence of the decision of the Supreme Court of Alabama, which was binding on the courts in which Justice Embry's claims against the insurance companies were pending. The US Supreme Court held that "*when Justice Embry made that judgment, he acted as a judge in his own case*", and that the "*interest was direct, personal, substantial, [and] pecuniary*". It clarified that "*we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama* '*would offer a possible temptation to the average … judge to … lead him not to hold the balance nice, clear and true.*'" (Citing, *Ward*, 409 U.S., at 60 (quoting *Turney v. Ohio,* supra, at 532).

43. In ***Liteky et al. v. United States*, 510 U.S. 540 (1994)** the US Supreme Court looked into the question of prejudice of the Judge who conducted the trial of petitioners charged with "willful destruction of property of the United States". The Petitioners had engaged in acts of vandalism at the Fort Benning Military Reservation while protesting United States' military actions in El Salvador. The Petitioners had asked for recusal of the judge on the basis of exhibition of animosity during trial. The US Supreme Court found the grounds for recusal, as raised before the District Judge, inadequate. It held that:

> *The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who may have been a thoroughly*

> *reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task. As Judge Jerome Frank pithily put it: 'Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." In re J.P. Linahan, Inc., 138 F. 2d 650, 654 (CA2 1943). Also not subject to deprecatory characterization as 'bias' or 'prejudice' are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant*.

Justice Scalia, writing for the US Supreme Court, further held:

> *First, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. See United States v. Grinnell Corp., 384 U.S., at 583. … Almost invariably, they are proper grounds for appeal, not recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge … A judge's ordinary efforts at courtroom administration – even a stern and short-tempered judge's ordinary efforts at courtroom administration – remain immune*.

44. The first point to note is that a Judge's approach to courtroom administration, even where harsh, is not an adequate basis to support an allegation of bias. Second, to establish bias, there is need to state concrete facts from

which the inference of bias must flow naturally. The Supreme Court found no bias in ***Parvez Musharraf*** even though General Musharraf had incarcerated Justice Iftikhar Chaudhary. Similarly, in ***Aetna Life***, bias or prejudice against insurance companies was not found by the US Supreme Court merely on the basis that the Judge, by virtue of his own claims against insurance companies, may have "*hostile feelings*" against them, like other claimants, frustrated with the delays caused by insurance companies in recognizing such claims. It was the act of the Judge of laying down new law that bound the courts that were adjudicating his insurance claims, in view of which his claims were upheld and pecuniary benefits flowed to the Judge, that sustained the claim of bias. For an institution to establish bias, it is required to meet a very high evidentiary standard due to the impersonal nature of institutions. Such claim will not ordinarily pass muster unless the institution can establish that the outcome of the case served a direct personal or pecuniary interest of the Judge in question.

Reconciling Reasonable Apprehension & Likelihood of Bias

45. As mentioned in the initial part of this opinion, the first principle that is relevant in the context of recusal of a Judge is that 'no one can be a judge in their own cause'. Where this principle is attracted, the disqualification of the Judge is automatic. The basis for such disqualification flows from Article IV of the Code of Conduct and is attracted where a judge has a "personal interest" in the outcome of the case. This is where the-real-likelihood-of-bias test is applicable and

will ordinarily lead to automatic disqualification if the outcome of the matter is likely to affect the personal or proprietary interest of the judge.

46. In such matters the Judge is not the keeper of his own conscience, in the sense that he has no discretion in the matter. If the personal interest of the Judge is affected by the decision in the case, it creates a real likelihood of bias, and the fact that he may still be able to judge the matter dispassionately and objectively becomes irrelevant. The Judge must decline to hear the case. This is a strict test and the threshold required to trigger this test is low: even the slightest pecuniary interest being directly affected by the decision would trigger disqualification.

47. The principle that justice must not only be done but must also be seen to be done, triggers the reasonable-apprehension-of-bias test. This is an objective test rooted in the perception, not of the interested litigant, but of a neutral bystander disinterested in the outcome in the matter. This test would be triggered where a disinterested and impartial person would have a reasonable basis to believe that the Judge harbors such aversion, hostility of disposition toward the party before it that he or she cannot be a neutral arbiter of the law capable of rendering a fair judgment in the matter.

48. The “reasonable apprehension” for this rest must be rooted in a known or manifested predisposition of the Judge that creates the well-grounded apprehension that the outcome in the case will not be informed by its merits as determined during the adjudicatory process, but by

extraneous factors that make the Judge partial toward a preconceived outcome. This is not a strict test. The threshold required to trigger it is high: it is not the perception of an interested party and its like or dislike for the Judge, but the objective viewpoint of a reasonable and disinterested bystander based on facts that support the logical inference of bias that constitutes the trigger.

49. The caveat here is that there can never exist a legitimate and reasonable apprehension of bias where a party traces aversion and hostility of the Judge in his/her commitment to uphold and apply the Constitution and the law. The other caveat applies to state institutions. Judges as well as officials who act on behalf of state institutions exercise public authority on behalf of the people in accordance with the law and the Constitution. Neither can have a personal interest in the outcome of judicial proceedings. While a state institution may be able to claim that the Judge is conflicted where the outcome of the matter affects the personal or pecuniary interest of the Judge, it would require a truly extraordinary set of circumstances, if at all (that are frankly hard to envisage), where a state institution could successfully bring a bona fide claim of bias against a Judge adjudicating a matter related to such state institution.

Mala fide and bald claims of Bias

50. In ***Parvez Musharraf***, while responding to the contention of the petitioner's counsel that Justice Iftikhar Muhammad Chaudhary was disqualified from hearing the case on grounds of bias, Justice Jawwad S. Khawaja held

that, "*if the petitioner's contention is accepted it would be akin to saying that a judge who decides against the constitutionality of actions taken by a state functionary, thereby demonstrates impermissible bias against such functionary rendering the Judge incapable of hearing cases involving such functionary…Judges, because of the nature of their work, at times do encounter invective, and at times malicious tirades, including obnoxious hate speech from litigants… But they are able to disregard the same on account of their experience and training, when hearing cases involving such persons in Court*."

51. It was held by the Supreme Court in ***Independent Media Corporation vs. Federation of Pakistan (PLD 2014 SC 650)*** that, "*litigants at times make attempts to avoid hearing before certain benches but at times such attempts are not well intentioned. There may even be attempts to intimidate or malign judges or institutions of the state and thereby, to undermine such individuals or institutions*." It was noted that where malignant remarks are made against judges in an effort to intimidate them and seek recusal, "*if judges do not deal firmly with such remarks (where unfounded) this may encourage unscrupulous elements into saying things which may erode the standing, respect and credibility of the Court*."

52. It was reiterated in ***Independent Media Corporation*** that, "*it is the conscience of the Judge himself which must determine his decision to sit on a bench or not*." Where a claim of bias is brought forth by a party in order to embarrass court proceedings and intimidate or malign a

Judge with a view to engineering his/her recusal, such party must be dealt with strictly and sternly. This is because the underlying interest is not to be protective of the sentiments of the Judge facing intimidatory tactics, but public interest in upholding the independence of the judiciary and ensuring that no party, howsoever powerful, is able to manipulate the composition of benches and/or interfere with and abuse the process of the Court.

53. The object underlying the principle of judicial independence is the need to keep processes of justice unsullied. A litigating party may have a desire to be heard by a certain judge. But such party has no say in the matter. Allowing a party to indulge in forum-shopping and to pick and choose the judge who will sit in an adjudicatory capacity over its claim is tantamount to facilitating abuse of the court process. Article 204(2)(a) provides that any person who "abuses, interferes with or obstructs the process of the Court" is liable to be punished for contempt of court. Where a court finds that the plea for recusal on grounds of bias is devoid of bona fide and is part of an intimidatory scheme to force recusal, the consequences prescribed in Article 204 of the Constitution must follow.

Recusal as obstruction of the process of the Court

54. There is a growing abhorrent practice of using recusal requests accompanied by efforts to scandalize the court and intimidate the Judge into disqualifying himself/herself from hearing a matter, in which a party to the proceedings suspects that the outcome might not be to its

liking. In such situation, the recusal request is used as a device to delay adjudication of the matter and force reconstitution of the bench hearing the matter. This device is used to abuse, interfere with and obstruct the process of the Court.

55. In ***Rizwan Malik vs. Mst. Yasmin Shafique*** (Civil Revision No. 474/2015) in order dated 22.09.2021 this Court held that for a recusal request, "*to be deemed bona fide, it must be made at the first instance when a Bench is seized of a matter, but not after arguing the matter and reaching a conclusion based on conjecture, that the outcome of the adjudication might not be favorable to such party. The right to fair trial guaranteed by the Constitution certainly doesn't envisage an entitlement to pick an adjudicator of choice who the litigating party believes would be inclined to decide it its favor*". And further that, "*the practice of scandalizing a court with unfounded allegations of bias, based on nothing but projected outcome in view of the questions passed to counsel in order to understand the lis, must be deprecated*."

56. While dismissing a request for recusal in ***Khadija Ammar vs. Government of Pakistan*** (Writ Petition No. 4343/2021), this Court observed in order dated 10.02.2022 that, "*in dispensing justice, a judge is aware that he is not in a popularity contest. Courting the approval of any party or its counsel or letting the fear of criticism or disapproval of a party or its counsel affect the outcome of a matter before the judge would amount to misconduct and lack of allegiance to his Oath of Office…It is for the court to preserve its conscience and dispense justice as a neutral arbiter of the*

law. In doing so, it must act resolutely and not be browbeaten or intimidated by a party or its counsel."

57. In ***Kanwar Naveed Jameel vs. Province of Sindh*** **(PLD 2022 Sindh 499)**, the Sindh High Court, while dismissing an application seeking recusal of a Judge, after discussing the law laid down by the Supreme Court, held that, "*the case law discussed above discourages recusal where it is apparent that the perception of bias/partiality is being created by a litigant or a counsel to divert a case from a Bench which he perceives as unfavorable to a Bench which he perceives as more favorable*." While dismissing a request for recusal, this Court held in ***Muhammad Azam Khan Swati vs. The State*** **(2023 PCr.L.J 350)** that, "*there is no principle of transfer of cases from one Bench to another and the matter is left to the discretion of the Judge. The menace of Bench/forum shopping has become rampant in almost every Court…*"

58. In ***Abid Shahid Zuberi*** the Supreme Court, while dismissing a recusal application observed that, "*the likely purpose of the Federal Government in filing the present recusal application [is that] there is a chain of events in which the Federal Government and/or Federal Ministers have sought to erode the authority of the Court and to blemish the status of some of its Judges with the object of blackmailing, delaying or distorting the result of the judgments of the Court on the constitutional right of the people to be governed by an elected government*." It ruled that, "*the recusal application filed by the Federal Government is declared to be devoid of merit and legal force. Its object lacks good faith for aiming to*

harass a Member of the Bench without cause in order to avoid adjudication on the constitutional failings pointed out in the impugned notification…the recusal application suffers from the common defect of being motivated and hence constitutes an attack on the independence of the Judiciary."

Findings of the Court

59. In view of the law discussed above juxtaposed against the grounds raised in the recusal applications, this Court finds that the applications suffer from *mala fide* in law and are part of an intimidatory design to seek the recusal of the Presiding Judge from hearing the instant matter without any legitimate cause. The Court is also of the view that the applications filed by FIA, IB, PTA and PEMRA are part of a collusive scheme to embarrass the proceedings of this Court and to bring pressure to bear upon the Presiding Judge to disqualify himself from hearing the instant matters. A perusal of the orders passed in the instant matters and the arguments made on behalf of the Federal Government as well as the agencies of the Federal Government, manifest dogged resistance to engaging with the subject-matter and addressing the questions of the Court in a candid and truthful manner. This Court has continued to afford opportunities to the respondents to address the issue of illegal surveillance of citizens, phone tapping, unlawful recording of phone calls and unlawful release of recorded conversations violating the privacy of citizens with some seriousness. As it is, the facts brought before the court reflect incompetence on part of the Federal Government and its agencies and instrumentalities and a lack of desire to protect the fundamental rights of

citizens guaranteed by the Constitution. It has also been argued by the learned counsel for the petitioners that the Federal Government and its agencies and instrumentalities are complicit in facilitating the breach of rights of citizens to life, privacy and dignity.

60. The primary argument of FIA, IB and PTA for seeking recusal is that the Presiding Judge is one of the six authors of the Letter addressed to the Supreme Judicial Council and copied to the Judges of the Supreme Court. This basis for seeking recusal is misconceived. The Letter is a correspondence amongst members of the Judiciary. It seeks guidance from the Supreme Judicial Council with regard to the appropriate response to incidents of intimidation and harassment faced by members of the Judiciary from outside the institution, including, *inter alia,* operatives of ISI. The Letter is addressed to the Supreme Judicial Council, which is vested with authority under Article 209 of the Constitution to prescribe the Code of Conduct, that judges of High Courts are bound to abide by in terms of Article 209 of the Constitution as well as the Oath of Office sworn by Judges. The Letter was copied to Judges of the Supreme Court as it also proposed a judicial convention for purposes of carrying out an intra-institutional conversation to discuss how best to protect the independence of the Judiciary, which is a salient feature of the Constitution, as an institutional matter. The Letter is not in the nature of a complaint (as the SJC has no mandate to investigate the actions of intelligence operatives) and was also not a communication meant for public consumption. It was a confidential intra-institutional correspondence that got

leaked to the media and has attracted public debate. As the Supreme Court has taken cognizance of the matter and has initiated proceedings under Article 184(3) of the Constitution, it would be inappropriate to address the intent and purpose of the Letter any further. The Court has been compelled to make the aforementioned observations as the basis for the recusal applications is the Letter.

61. In view of the purpose of the Letter and the identity of those it was addressed to, its content provides no basis to any of the respondents to seek recusal of the Presiding Judge from hearing a case involving the Federal Government or any entity falling with the control of the Federal Government, including investigation and intelligence agencies. As has held discussed earlier in this order, the threshold to be met for seeking the recusal of a Judge is to establish a reasonable apprehension of bias on part of the Judge. The facts to be asserted to establish such bias should be so plain and unambiguous that an inference of bias naturally flows from them. The applications do not meet the test. Any reasonable person who reads the Letter can only come to the conclusion that its authors are concerned with interference of intelligence agencies and the ISI with the affairs of the Judiciary, which interference may have the effect of undermining the independence of the Judiciary. In view of the content of the Letter, no reasonable apprehension can be formed that the signatories of the Letter harbor any hostility or animosity toward the Federal Government or any of the entities controlled by it, including intelligence agencies.

62. Further, as has been explained in the earlier part of this opinion, for an institution to seek the recusal of a Judge on grounds of bias, the institution must establish that the outcome of the case would serve a personal or pecuniary interest of the Judge. The purpose of the Letter, as is unambiguously evident from its plain reading, is to bolster and uphold the independence of the Judiciary. The subject-matter in the cases being adjudicated relate to the rights of citizens to life, liberty, privacy and dignity as guaranteed by Articles 9 and 14 of the Constitution. Upholding such rights is not related to any personal or pecuniary interest of the Presiding Judge, but constitutes a duty of this Court to uphold the Constitution and enforce the fundamental rights of citizens guaranteed by it. To allege that preventing illegal surveillance of citizens constitutes a personal or pecuniary interest of the presiding officer of the Court is in itself a manifestation of the *mala fide* that the recusal applications are afflicted with.

63. The learned Attorney General has clarified that he is the senior partner of AJURIS, presently on leave while discharging the duties and functions of the office of Attorney General for Pakistan. The Presiding Judge has no concern with the briefs being held by counsels that are presently associated with AJURIS. The actions of erstwhile colleagues or counsels that serve in a firm that a Judge has previously worked with, is never a ground for recusal (unless such colleague has a close personal relationship with the Judge within the terms of the Code of Conduct, and is seeking to appear in a case before the Judge). Further, the cases in

which the Presiding Judge appeared during his time as a lawyer cannot also be a basis for seeking a recusal, unless the very case in which the judge appeared as a counsel comes up for adjudication before him in his capacity as a Judge or the case before him involves a matter in which he had access to confidential information provided by one of the litigating parties before him which is germane to the matter before him. It is not PTA's case that either of the aforesaid conditions are met in the instant case. PTA, the telecom regulator, as well as the telecom providers that are respondents in the instant matters are all institutional actors, and no facts have been asserted or alleged that the Presiding Judge has a personal relationship or connection with any one of the parties on the basis of which the Presiding Judge ought to seek recusal in terms of the Code of Conduct.

64. For the aforementioned reasons, the Court finds that the recusal applications are *mala fide* and frivolous, and, *prima facie*, part of a collusive scheme to intimidate the Presiding Judge into disqualifying himself from hearing the instant matters. The applications are **dismissed** subject to a cost of Rs.500,000/- payable by each applicant (and shall be paid personally by the public official/s within each applicant who authorized such application) to the Deputy Registrar (Accounts) of this Court, which funds will be held by the Deputy Registrar (Accounts) till the decision of these cases and will be disbursed in view of the instructions of the Court in its final judgment.

65. As the learned Additional Attorney General and the representatives of FIA and IB have failed to satisfy the Court

that the applications are duly authorized, let FIA and IB file their reports explaining the legal framework within which such organizations exercise authority and identify the relevant officials who are authorized to make representations on behalf of FIA and IB along with an affidavit filed by Director General, FIA and Director General IB, respectively, stating who in fact authorized the filing of the instant applications.

66. Let a notice also be issued to Director General, FIA and Director General, IB to satisfy the Court as to why contempt proceedings should not be initiated against them for filing collusive applications to embarrass the proceedings of the court and to interfere with and abuse the process of the court and divert the course of justice within the meaning of Article 204 of the Constitution.

67. Let notices also be issued to Chairman, PTA and Members of PTA, who have authorized filing of recusal application on behalf of PTA, to satisfy the Court as to why contempt proceedings should not be initiated against them for filing collusive applications to embarrass the proceedings of the Court and to interfere with and abuse the process of the court and divert the course of justice within the meaning of Article 204 of the Constitution.

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68. The application is allowed for the reasons stated therein. Let the applicant file the said report within a period of two weeks.

69. The Court has heard Mr. Aitzaz Ahsan, Senior ASC who was appointed as amicus curiae. He has made submissions before the Court and has also undertaken to file amicus brief summarizing his contentions. Let the matter be fixed on **29.05.2024**. The Court will begin its proceedings with the arguments to be furnished by Mr. Faisal Siddiqui, ASC, to be followed by arguments of the telecom companies. Such respondents will ensure that technical experts are available in Court to assist with regard to the LI regime and the legal framework pursuant to which confidential data of consumers of such telecom providers is shared with law enforcement agencies.

(BABAR SATTAR)
JUDGE

Saeed.