

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

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

**Civil Petition No. 1026 of 2021 along with CMA No. 5076 of 2021**

*(Against the judgment dated 2.11.2020 of the High Court of Sindh, Karachi passed in Const. P. No.D-2890 of 2018), (CMA seeking special permission to argue the case on behalf of respondents No.5 to 8)*

The Officer Incharge Army Housing  
Directorate, Karachi ...Petitioner

Versus

The Federation of Pakistan through Secretary  
Ministry of Defence and others ...Respondents

For the Petitioner: Mr. Abid S. Zuberi, ASC

For the Respondents: Nemo.

For the Applicant: Nemo.  
*(In CMA-5076/21)*

Date of Hearing: 25.10.2023

**ORDER**

**Qazi Faez Isa, CJ.**

Civil Misc. Application No.5076/21: This CMA has been filed by Mr. Abdul Moiz Jaffery, an Advocate of the High Court, seeking permission to represent respondents Nos. 5 to 8, however, he is not in attendance. Therefore, the application is dismissed for non-prosecution.

Civil Petition for Leave to Appeal ('CPLA') No. 1026/2021: The learned counsel refers to a letter dated 20 May 1982 which is titled '*Raising of a Housing Directorate*' and to the 99 years lease executed on behalf of the President of the Islamic Republic of Pakistan through the Military Estate Officer in favour of the Housing Directorate, Ministry of Defence, Government of Pakistan ('**the letter**' and '**the lease**').

2. This CPLA is filed by '*The Officer Incharge, Army Housing Directorate*' and the Advocate on Record ('**AOR**') was engaged by Qazi Taskeen Rauf on the basis of an '*Authority Letter*' issued by Mr. Aftab

Ahmed, Assistant Director, Housing (Askari Colonies Management) Askari-IV, Karachi (***Askari Housing***). The learned AOR then engaged learned Mr. Abid S. Zuberi as the Advocate Supreme Court (***ASC***) to represent the petitioner. The petitioner has arrayed the Federation of Pakistan, the Military Estate Office, the Cantonment Board, Faisal and others as respondents.

3. The following questions arise:

- (1) Is the petitioner a legal entity either under the Constitution of the Islamic Republic of Pakistan (***the Constitution***), the Rules of Business, 1973 or under any law?
- (2) Can *The Officer Incharge* represent the Ministry of Defence, Government of Pakistan, in whose favour the lease was executed, and initiate or defend legal proceedings?
- (3) If the petitioner is considered to be a component of the Federation could it engage private counsel without obtaining requisite permission and complying with the decision in the case of *Rasheed Ahmad v Federation* (PLD 2017 Supreme Court 121)?

4. In response to our query whether the *Askari Housing* was a legal entity established by law or has *locus standi* to initiate and defend legal proceeding the learned Mr. Abid Zuberi, ASC, referred to the letter and to the lease and stated that the *Askari Housing* could do so. But, he did not support his answer with reference to the Constitution, the Rules of Business, 1973 (***the Rules***) or any law.

5. The learned AOR filed this CPLA, without first ascertaining the petitioner's legal status. He assumed that the '*Authority Letter*' issued by an Assistant Director of *Askari Housing* was sufficient, and, on its basis also engaged an ASC. The underlying assumption of the learned AOR being that the executive authority of the Federation can be exercised by *Askari Housing* through its Assistant Director.

6. It would be appropriate to examine how the *executive authority of the Federation* is to be exercised; how the Federal Government allocates and transacts its business; and, how litigation on behalf of the Federal Government is authorised and who can institute and conduct litigation. Article 90 of the Constitution stipulates:

'90 (1) Subject to the Constitution, the executive authority of the Federation shall be exercised in the name of the President by the Federal Government, consisting of the Prime Minister and the Federal Ministers, which shall act through the Prime Minister, who shall be the chief executive of the Federation.

(2) In the performance of his functions under the Constitution, the Prime Minister may act either directly or through the Federal Ministers.'

And, Article 99(3) of the Constitution, reproduced hereunder, empowers the Federal Government to make rules for the *allocation and transaction of business*:

'99 (3) The Federal Government shall also make rules for the allocation and transaction of its business.'

7. The Federal Government has enacted the Rules to allocate and transact its business. Rule 5(15) thereof stipulates, that:

'5 (15) Detailed instructions for the manner of disposal of business in the Federal Secretariat shall be issued by the Establishment Division in the form of Secretariat Instructions.'

8. The abovementioned *detailed instructions* have been enacted pursuant to rule 5(15) of the Rules, which are the *Secretariat Instructions 2005*; relevant provisions whereof are reproduced hereunder:

#### 'CONSULTATION WITH LAW AND JUSTICE DIVISION

##### **General**

65. The Law and Justice Division shall be consulted in all matters involving legal questions.

##### **Prosecution**

66. When the Government of Pakistan is concerned with any criminal prosecution, a reference shall be made to the Law and Justice Division;

67. No prosecution shall be initiated without consultation with the Law and Justice Division, and no prosecutions shall be instituted or withdrawn in any manner contrary to the advice of the Law & Justice Division, without reference to the Government in the Division concerned; and

##### **Conduct of cases in Courts**

67-A. Instructions regarding the conduct of cases of the Federal Government in Courts, etc. shall be issued by the Law and Justice Division. The existing instructions on the subject are given in Appendix F.'

Clauses 1 and 4 of Appendix F respectively stipulate:

'1. No civil suit or legal proceedings shall be instituted or initiated on behalf of the Federal Government by any Division/Department without the prior consultation with the Law and Justice Division.'

'4. If the Law and Justice Division agrees it will nominate a counsel to file and conduct the suit or legal proceedings.'

9. Neither *Askari Housing* nor its *Officer Incharge* is a separate entity. The requisite authorisation to initiate/defend legal proceedings, as mentioned above, was also not obtained. If the High Court's judgment was to be challenged it had to be done by one of the legal entities which have been arrayed as respondents herein, and after obtaining requisite approval/permission. The petitioner arraying them as respondents suggests that the respondents were satisfied with the judgment of the High Court, which has been assailed herein.

10. As regards our query whether the petitioner could engage a private counsel we did not receive any answer from the learned Mr. Zuberi. *Askari Housing* is a component of the Federal Government and has no independent legal status. And, this Court has held that private counsel can only be engaged as stipulated in the decision in *Rasheed Ahmed's* case, relevant portion wherefrom is reproduced hereunder:

'There may however be cases which involve complicated questions of the Constitution or some extremely technical law which the Attorney-General, in case of the Federation, and the Advocate General, in the case of a province, and their law officers do not have the requisite ability to attend to. In such a case the concerned constitutional officer holder should certify that he and the law officers do not have the requisite expertise in the field and that the engagement of a private counsel who is competent and experienced is required. Needless to state, the engagement of private counsel can only be sanctioned for compelling reasons and in the public interest and not to protect or save a particular individual or for any other ulterior reason.' (para 21, pp.132-133)

'The Federal Government and the provincial governments have a host of law officers who are paid out of the public exchequer. If a government contends that none amongst its law officers are capable of handling cases then the question

would arise why have incompetent persons been appointed. In such a scenario the public suffers twice, firstly they have to pay for incompetent law officers, and secondly, they have to pay again for the services of competent counsel the government engages. The public exchequer is not there to be squandered in this manner.' (para 17, p.130)

This CPLA has been filed without complying with the Rules and the Secretariat Instructions 2005, and permission to engage private counsel was also not obtained in terms of *Rasheed Ahmed's* case.

11. Therefore, for the aforesaid reasons, this CPLA is dismissed as not maintainable.

Chief Justice

Judge

Judge

Islamabad:  
25.10.2023

Approved for Reporting

*M. Azhar Malik/\**