

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT, RAWALPINDI BENCH
JUDICIAL DEPARTMENT**

Case No: W.P.No.321/2022

Hafeez-ur-Rehman Choudhary **Versus** Federation of Pakistan etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary.
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31.01.2022 Barrister Muhammad Ahmad Pansota, ASC for the
Petitioner.
Mr. Mujeeb-ur-Rehman Kiayani, Additional Advocate
General Punjab (on Court call).
Malik Ahtesham Saleem, Assistant Attorney General (on
Court call).

The Petitioner has filed this petition under Article 199 of
the Constitution of Islamic Republic of Pakistan, 1973 (the
“Constitution”) with the following prayer:-

*“In view of the above it is most respectfully prayed that
this Hon’ble Court may be pleased to:*

- (i) Declare the Respondents conduct violative of
Article 2A of the Constitution;*
- (ii) Direct the Respondents to take steps to meet the
objective resolutions given in the Constitution;*
- (iii) Refer the matter to Parliament for consideration,
discussion and evaluation of the current system
and hold a referendum under Article 48(6) of the
Constitution in order to ascertain and determine
the will of the people of Pakistan;*
- (iv) Eliminate the special seats in Senate, National and
Provincial Assemblies;*
- (v) Direct the Respondents to take responsibility of
achieving separation of powers and to prevent the
misuse of powers; and*
- (vi) Direct the Provincial Government to form district
governments under the true spirit of Article 2A.”*

2. When confronted how such kind of writ is maintainable
before this Court, which goes against the basic structure of the
Constitution and the jurisprudence developed by the Superior
Courts of Pakistan, Barrister Muhammad Ahmad Pansota, ASC

submits that reason to file this petition, in which objection was made by the office and subsequently overruled by this Court, is only that various requests/applications of the Petitioner addressed to the Cabinet Division/Respondent No.1 have not been considered and decided so far, hence, he has sought indulgence of this Court by filing the Writ of *Mandamus* to direct the Respondents to do, what is required by law to do, specifically under the Federal Rules of Business, 1973 (the “**Federal Rules**”).

3. At this juncture, learned Additional Advocate General Punjab and learned Assistant Attorney General have also objected to the maintainability of this petition on the ground that the petition is liable to be dismissed under the Doctrine of Limine Control developed by this Court in *Asif Saleem versus Chairman BOG University of Lahore and others* (PLD 2019 Lahore 407), holding that for early and expeditious disposal of a case, the Court can decide the matter at limine stage on the basis of material/documents available on the record/file, without issuing notice to other side so that the party concerned may not face inconvenience or monetary loss in approaching this Court because (a) no proper party has been made in this case by the Petitioner; (b) it is hit by the territorial bar; (c) it has been filed against basic provisions of the Constitution; and (d) most importantly, this Court has to exercise the powers of judicial restraint to protect/guard the sanctity of the Constitution as well as the Government Institutions established under the Constitution.

4. It is evident from the afore-quoted prayer clause that this petition mentions holding of a referendum to ascertain and determine the will of the people of Pakistan, which goes against the basic structure of the Constitution regarding the democracy. Pertinent to note here that this Court has already passed a detailed judgment by discussing preamble of the Constitution

on democracy in the case of Jamshed Iqbal Cheema versus The Election Appellate Tribunal and others (2021 LHC 6800) (LHC Citation), which clearly states that (i) principles of **democracy** shall be fully observed; (ii) dedicated to the preservation of **democracy** achieved by the unremitting struggle of the people against oppression and tyranny; and (iii) the State shall exercise its powers and authority through the **chosen** representatives of the people. Such kind of petition brought before the Court by Barrister Muhammad Ahmad Pansota, ASC in this legal system will try to change the structure of the Constitution, scope of which has been elaborated by the Hon'ble Supreme Court of Pakistan in District Bar Association, Rawalpindi and others versus Federation of Pakistan and others (PLD 2015 SC 401). Moreover, the Full Bench of the Supreme Court of India in the famous case reported as Kesavananda versus State of Kerala (AIR 1973 Supreme Court 1461) has held that the basic structure and frame work of the Constitution cannot be altered as it was made by the chosen representatives of the country. The leading Jurist of India namely Nani Ardeshir Palkhivala in Kesavananda's Case (*supra*) convinced the Supreme Court of India by stating that creature of the Constitution, cannot become its master. By looking at the prayer clause of this petition and array of the Respondents, it will manifest that no proper parties, under the Federal and the Provincial Government, have been made against whom direction can be issued by this Court; nor any prayer to that effect under the Ministry, Division or Department has been made; and also no (relevant) law has been mentioned. The powers and functions of the Federal and the Provincial Government have been discussed in detail by this Court in Muhammad Yousaf versus Secretary Finance etc. (PLD 2021 Lahore 156) = [2021 PLC

(C.S.) 195]. Relevant Paragraphs No.10 and 11 of the said judgment are given as under:-

“9. Article 7 of the Constitution defines that ‘the State’ means the Federal Government, [Majlis-e-Shoora (Parliament)], a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess. Primarily the governments in Pakistan are divided into “Federal Government” and “Provincial Government”. The Federal Government functions under Articles 90 and 97 read with Article 99 under which Federal Rules of Business, 1973 are made whereas the Provincial Government functions under Articles 129 read with Article 137, and under Article 139 conduct of business is made alongwith Punjab Government Rules of Business, 2011. The law made by either Federal Government or Provincial Government originates through legislative procedure provided under Article 70 of the Constitution. After the 18th Amendment made to the Constitution in the year 2010, the concept of Provincial Autonomy stands heightened and accentuated in the context of the Federation of Pakistan and what was previously not within the domain of the federating units and was not do-able for the Provinces now falls I.C.A.No.530 of 2014 5 within the ambit and purview of their executive authority and legislative competence.

10. The concept of decentralization of power and functions has gained currency throughout the world and political philosophers have advocated merits of sharing responsibilities with all the component units of the state instead of concentration and centralization of all the powers within the Federal Government in order to empower the Provinces to legislate laws and execute policies in accordance with the requirements and needs of their respective areas and to secure effective and efficient delivery of services for the citizens residing therein in accordance with their particular ground realities.”

5. From the prudent glance of the above mentioned two paragraphs, it is clear that the Federal Government exercises powers within the frame work provided under the Federal Rules while the Provincial Government will exercise powers within the frame work provided under the Punjab Government Rules

of Business, 2011 (the “**Provincial Rules**”). In this case, the Petitioner has made the Cabinet Division as party, for which the allocation of business as well as the functions/powers are listed under Schedule-II (Rule 3) to the Federal Rules.

6. In response to the above legal scenario, Barrister Muhammad Ahmad Pansota, ASC submits that he will not press this petition if the Petitioner be granted hearing by any of the relevant authority of the Cabinet Division because under Rules 16,17 and 18 of the Federal Rules, the Cabinet can decide any matter, if provided therein. He next submits that before invoking Constitutional jurisdiction of this Court, the Petitioner has filed a detailed application/request to hold a referendum for Presidential system in Pakistan, which is appended with this petition as Annexure-A, alongwith all the relevant documents and a direction may be issued by this Court for expeditious disposal of the said application. Learned Law Officers have no objection if such direction be issued by this Court.

7. I am afraid, the request of the Petitioner regarding issuance of a direction by this Court for expeditious disposal of his aforesaid application/request cannot be allowed being not tenable in the eye of law because the writ of *mandamus* can only be issued, under Article 199 of the Constitution, to a person to do, what is required by law to do, while in this case neither proper party has been made to whom a direction can be issued nor the relevant law has been cited by the Petitioner under which such direction can be issued and most importantly, the prayer made by the Petitioner is against the basic structure of the Constitution as discussed above. This writ petition is, therefore, **dismissed** being not maintainable. Copy of this order be sent to all the Respondents for their information and record.

(JAWAD HASSAN)
JUDGE