

**Pakistan Information Commission**



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  @PkInfoComm



**In The Pakistan Information Commission, Islamabad**

**Appeal No 060-06/19**

**Mukhtar Ahmed Ali**

(Appellant)

Vs.

**Supreme Court of Pakistan**

Through its Registrar

(Respondent)

**Order**

**Date:** July 12, 2021

**Zahid Abdullah:** Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated May 06, 2019, to the Commission, stating that he submitted an information request to the Registrar of Supreme Court of Pakistan dated April 10, 2019 under the Right of Access to Information Act 2017.
2. The information sought by the Appellant is as follows:
  - a) *“Total sanctioned strength of staff members of Supreme Court of Pakistan (category-wise) against different positions/pay-scales i.e., from pay scale 1 to 22 (category-wise).*
  - b) *Total vacancies in the Supreme Court of Pakistan against different pay-scales/positions (category-wise); and dates since which these positions have been lying vacant.*
  - c) *Number of staff members who are not regular but have been engaged on daily-wage basis or through short-term or long-term contracts against various positions/pay-scales (category-wise).*
  - d) *Number and types of positions created anew since January 1, 2017.*
  - e) *Total number of female staff members (category-wise) against various positions/pay-scales. The response may distinguish between the short-term/ temporary staff members and regular ones.*
  - f) *Total number of persons with disabilities working with Supreme Court of Pakistan against various positions/pay-scales (category-wise). The response may distinguish between the short-term/ temporary staff members and regular ones.*
  - g) *Total number of transgender persons working with Supreme Court of Pakistan against various positions/pay-scales (category-wise). The response may distinguish between the short-term/ temporary staff members and regular ones.*
  - h) *A certified copy of the latest approved Service Rules of the Supreme Court of Pakistan.”*

## B. Proceedings

3. Through a notice dated June 16, 2019 sent to the Worthy Registrar of Supreme Court of Pakistan the Commission called upon the Respondent to respond to the information request and complaint of the applicant.
4. Another notice was sent to the Respondent on July 26, 2019 with the direction to provide reasons in writing within three working days of the receipt of this notice.
4. The Respondent through a letter vide No. F.1/60/2019 (220)-SCA dated August 08, 2019 stated that "I am directed to forward herewith copy of this court's letter No. 1/18/2009-SCA dated September 30, 2014 for your information and record".
5. The response of the respondent was shared with the appellant on August 21, 2019.
6. The Appellant shared his response to the shared information on August 28, 2019 and stated that "I have reviewed the response of the Registrar Office of the Hon'ble Supreme Court of Pakistan, which was shared with me through your above referred letter for rejoinder in respect of my information request submitted on April 10, 2019. My submissions in response to the stance taken by the Registrar Office of the Hon'ble Supreme Court are as below:

1.1. The Registrar Office hasn't directly responded to my application for access to information dated April 10, 2019, which was filed under the Right of Access to Information Act 2017 and Article 19-A of the Constitution. Instead, it has simply forwarded a letter that it had written to the Secretary, Ministry of Law & Justice on September 30, 2014 about a matter relating to National Assembly/ Senate Questions, which may have no direct bearing for the application for information that I had filed as a citizen in exercise of my fundamental right of access to information guaranteed by Article 19-A of the Constitution. Hence, the Registrar Office has not paid due consideration to my application and hasn't decided it on its own merits in the light of relevant provisions of law and the Constitution.

1.2. The said letter of the Registrar Office refers to Article 2A & Article 175 of the Constitution and the Hon'ble Supreme Court Judgment reported as Government of Sindh v. Sharaf Faridi (PLD 1994 SC 105) regarding separation of the Judiciary from the Executive, and then goes on to assert that "Constitution doesn't envisage oversight in any form/ manner by any other institution/ organ of the State on the functioning of the Courts".

Following points may be considered in this regard:

- the referred judgment is essentially about separation of judiciary from executive, and it does not specifically rule on the applicability of citizens' right to information on courts;
- the referred judgment was passed before the insertion of Article 19-A in the Constitution in 2010 through the 18th Constitutional Amendment and the later enactment of the Right of Access to Information Act 2017 and, therefore, it can't be relied upon to deny a fundamental right established through a subsequent constitutional amendment in the absence of any specific court judgment;
- the judiciary's independence and separation from executive is certainly ensured by the Constitution but it doesn't and shouldn't be construed to mean that judiciary is not accountable and responsive to citizens of the country, who have created all state institutions through legislation enacted by their elected

representatives and who are to exercise authority as a sacred trust, as provided in the Preamble of the Constitution of Pakistan;

- the judiciary has and must enjoy high degree of independence in relation to its judicial functions but it can't claim to be totally independent and sovereign, as it is very much part of the government that consists of executive, judiciary and legislature, and it can't shun public oversight, especially when it comes to use of public funds and exercise of administrative authority in the context of judicial administration; and

the said Registrar Office letter is of administrative nature and does not make a convincing case for denying access to information to citizens of Pakistan in the light of logical reasoning or court judgments passed in the context of Article 19A of the Constitution or the Right of Access to Information Act 2017.

In view of the above, it is requested that the Registrar Office may be directed to (a) immediately designate an officer to deal with information requests filed by citizens, as required by section 9 of the Act; (b) ensure proactive disclosure of information in accordance with section 5 of the Act; and (c) provide information that I requested vide my application dated April 10, 2019 without any further delay”.

### **C. Issues**

7. The instant appeal has brought to the fore the following issue:

Can the exercise of the constitutional right of access to information by citizens in the case of Worthy Registrar, Honourable Supreme Court of Pakistan be termed as executive oversight of the judiciary?

### **D. Discussion and Commission’s View on Relevant Issues**

8. This commission concurs with the argument of the Appellant that “Registrar Office letter is of administrative nature and does not make a convincing case for denying access to information to citizens of Pakistan in the light of logical reasoning or court judgments passed in the context of Article 19A of the Constitution or the Right of Access to Information Act 2017”.

9. The Act does not accord blanket exemption to any public institution. This commission has already held that Registrar office of Honourable Supreme Court of Pakistan comes within the definition of public body under Section 2 (xi) (e) which is as under:

“Any court, tribunal, commission, or board under the Federal law;”

10. This commission also concurs with the argument of the Appellant that “the judiciary's independence and separation from executive is certainly ensured by the Constitution but it doesn't and shouldn't be construed to mean that judiciary is not accountable and responsive to citizens of the country, who have created all state institutions through legislation enacted by their elected representatives and who are to exercise authority as a sacred trust, as provided in the Preamble of the Constitution of Pakistan”.

11. This commission, in case of Dr. Abdul Hameed Nayyar and Others Vs Ministry of Law and Justice has made some determinations which are relevant in the instant appeal and relevant portions are reproduced here:

“In the absence of any judgement of the Supreme Court which bars citizens from seeking information from the Supreme Court under the Right of Access to information Act on the grounds that it is tantamount to curbing independence of the judiciary, this commission is left with no option but to determine likelihood of any such eventuality.

The honourable Supreme Court of Pakistan as a public institution performs two kinds of functions i.e., a) judicial functions and b) administrative functions, like any other public institution.

This commission is of the view that the exercise of constitutional and statutory right of citizens in matters of public importance through the Act is neither likely to, nor, designed to curtail independence of the superior judiciary. This commission also believes that exercise of constitutional right of access to information in matters of public importance through the Act cannot be equated with executive oversight of superior judiciary.

The categories of information to be proactively disclosed under Section 5 of the Act have no bearing on the independence of the judiciary. Similarly, the information to be provided to the applicants under Section 6 of the Act is also not in conflict with the independence of the judiciary. Furthermore, the Public Information Officer to be designated under the Act will receive applications and can turn down any request for information which is likely to impact independence of the judiciary, relying on the relevant exemption clauses of Section 7 and 16 of the Act.

Each public institution performs certain core functions. This commission holds that if citizens' right of access to information in matters of public importance pertaining to superior judiciary is restricted on the grounds that it would impact its independence and core functions, the same grounds would be relevant in the case of all public institutions".

12. This commission is of the view that the question of access to the requested information pertaining to the total sanctioned strength of staff members of Supreme Court of Pakistan, total vacancies in the Supreme Court of Pakistan against different pay-scales/ positions, number of staff members who are not regular but have been engaged on daily-wage basis or through short-term or long-term contracts against various positions/pay-scales, number and types of positions created anew since January 1, 2017, total number of female, persons with disabilities, transgender persons working with Supreme Court of Pakistan against various positions/pay-scales and certified copy of the latest approved Service Rules of the Supreme Court of Pakistan is a matter of public importance. Furthermore, Section 5 of the Act pertaining to the proactive disclosure of information is also relevant in the instant appeal when juxtaposed with the requested information.
13. This commission is of the view that the constitutional right of access to information in matters of public importance can only be restricted on reasonable grounds supported by law. This commission holds that only provisions of this Act can restrict disclosure of any information. This commission is of the view that the disclosure of the requested information is warranted by Article 19-A of the Constitution of the Islamic Republic of Pakistan as it is a matter of public importance and that its access cannot be restricted under any of the provision of the Right of Access to Information Act 2017.
14. It is pertinent to mention here that this commission has maintained through its different Orders that the information, proactively published under Section 5 of the Right of Access to Information Act 2017, should be 'accessible' for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of 'accessible' in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:

“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.
15. Technology is a great leveller. It needs to be understood that people are not rendered disabled because of physical impairments but because of the barriers in the physical, social and attitudinal environment. In other words, when barriers are removed, people

with disabilities can take part in national life as functionally active and productive citizens on equal basis with others.

16. This commission notes with concern that public institutions have not accorded primacy it deserves to the accessibility of information for vulnerable groups. For example, this commission observed in Appeal No 632-09/20, Taimoor Khan Vs NA Secretariat and Senate Secretariat “even ‘The Rights of Persons with Disability Act 2020’, available on the web site of Senate Secretariat is not accessible for the blind and low-vision people. How can persons with disabilities make informed comments and provide feedback on the Act aimed at protecting and promoting their rights when it has not been made accessible to persons with disabilities in alternative formats catering to their needs?”

#### **E. Order**

17. Appeal is allowed. Worthy Registrar, Supreme Court of Pakistan is directed to share with the Appellant requested information in para 2 of this Order at the earliest, but not later than 20 working days of the receipt of this Order.
18. Worthy Registrar, Supreme Court of Pakistan is directed to notify Public Information Officer, (PIO), under Section 9 of the Act, put contact details of PIO on its web site as required under Section 5 (1) (h) of the Act.
19. Worthy Registrar, Supreme Court of Pakistan is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017, ensuring accessibility of the information proactively published on its web site for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities.
20. Copies of this Order be sent to Worthy Registrar, Supreme Court of Pakistan and the Appellant for information and necessary action.

**Mohammad Azam**

Chief Information Commissioner

**Fawad Malik**

Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on: July 12, 2021

This order consists of 5 (five) pages, each page has been read and signed.