



**In the Pakistan Information Commission, Islamabad**

**Appeal No 1409-10/21**

**Syed Muhammad Irfan Pirzada**

**(Appellant)**

Vs.

**Registrar, Islamabad High Court**

**(Respondent)**

**ORDER**

**Date:** June 28, 2022

Zahid Abdullah: Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated October 15, 2021 to the Commission, stating that he submitted an information request to the Islamabad High Court on April 08, 2021 under the Right of Access to Information Act 2017 but did not receive any response from the public body.

2. The information sought by the Appellant is as follows:

“In my above referred letters I had requested for copy of the completed inquiry and not the information about the resignation of the Accused Officer I again request following:

a. Copy of the completed inquiry (which was conducted for 5 years by different judges of the session court and ultimately MIT) which is my right as a complainant.

b. Rules under which resignation of the accused Officer has been accepted despite being served with show cause notice and personal hearing before the authority (meaning by Accused Officer has been given safe passage despite proofs provided for his misconduct) moreover being complaint I was not even informed.

c. No information has been given for all my cases which the accused officer decided without carrying out any proceedings after 31 Mar 2015 (All Proof provided and attached in my Affidavit in the inquiry)

I would be grateful if I am provided the above information ASAP for my further action please. I would also request once again for meeting in person which has not been provided despite my many requests”

**B Proceedings**

3 The commission held a total of 4 hearings on the instant Appeal. In the hearing held on December 16, 2021 vide letter dated December 01, 2021, Mr. Daniyal Hassan, State Counsel represented the Respondent. He submitted before the commission that Islamabad High Court is a constitutional body and does not fall within the purview of the Right of Access to Information Act, 2017. He also submitted before the commission that identical matter was pending before the Honourable Islamabad High Court in Writ Petition No. 4284/2021 challenging the earlier order of the Pakistan information Commission with respect to Appeal No 060-06/19 in the case titled Mukhtar Ahmed Ali vs Supreme Court

of Pakistan. Therefore, the proceedings on the instant appeal warranted sine die adjournment.

4 The Respondent also submitted its response through letter dated March 11, 2021 and its text is as under:

“Kindly refer to your letters/Appeals Nos. 056-06/19, 059-06/19, 066-06/19, 077 06/19, 611-09/19, 610-09/19, 615-09/19, 617-09/19, 536-08/19 dated: 07.10.2020 and Hon'ble Supreme Court of Pakistan letter No. F.1/60/2019(220)-SCA dated: 08.08.2019

02. I am directed to say that the Hon'ble Supreme Court of Pakistan has given Policy guidance on the matter of provision of information of Superior Courts, in its letter to Ministry of Law and Justice vide letter No. F.1/18/2009-SCA dated 30.09 2014 The Information Commission through letter dated: 07.10.2020 has apparently accepted this response of Hon'ble Supreme Court of Pakistan. The policy of Hon'ble Supreme Court of Pakistan stated in letter dated 30.09.2014 is as under

The Preamble of the Constitution of the Islamic Republic of Pakistan, which is now a substantive part of the Constitution by virtue of Article 2A, envisages that the independence of judiciary shall be fully secured. The mandate of Article 175 regarding separation of the Judiciary from the Executive already stands fulfilled in light of judgment of the Supreme Court reported as Government of Sindh v Sharof Faridi (PLD 1994 SC 105) The Constitution has dedicated a full Part (Part VII) comprising 4 Chapters on "The Judicature". The role of the Legislature in the appointment of Judges of the Superior Courts is delineated in the Constitution. Needless to mention that the Constitution contains a full-fledged mechanism of internal checks and balances on the working of the Courts in the form of appeal, review, etc. In this regard, Article 203 of the Constitution mandates the High Courts to supervise and control the Courts subordinate to them As regards the working of the Superior Courts, the Constitution does not entrust such a function to any outside institution/other organ of the State, rather leaves it to such Courts themselves. It may be noted here that the Constitution does not envisage oversight in any form/manner by any other institution/organ of the State on the functioning of the Courts. This position may kindly be appreciated while dealing with the queries/questions received from the concerned quarters

2 It is added here that the Superior Courts do publish Annual Reports on their working giving, amongst other things, the details of yearwise institution/disposal/pendency of cases for information of the general public. Such reports as well as other necessary information pertaining to the composition of Courts, etc., are also available on the websites of the respective Courts."

*3.The Hon'ble Supreme Court of Pakistan has reiterated this position to the Pakistan Information Commissioner, Islamabad, vide letter No. F.1/60/2019(220)-SCA dared 08.08.2019, which states as follows:*

*"With reference to your letter No. PIO47 dated: 16.07.2019, Appeal-055 06/19 & Appeal-060-06/19 dated 26 July, 2019, I am directed to forward herewith copy of this Court's letter No. 1/18/2009-SCA dated 30 September, 2014 for your information and record"*

*3. I am further directed to say that the Hon'ble Competent Authority has been pleased to direct that while dealing with the queries/questions receiving from any quarter under "Right of Access to Information Act, 2017, the Islamabad High Court is following the policy elucidated by the Hon'ble Supreme Court of Pakistan in its letter No.*

*P1/18/2009-SCA, dated 30.09.2014, and the same position is applicable to Islamabad High Court, Islamabad”.*

**C. Issues**

5 The instant appeal has brought to the fore the following issues:

- (a) Do proceedings on the instant appeal warrant sine die adjournment?
- (b) Can the exercise of the constitutional right of access to information by citizens under the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017 be termed as executive oversight of the judiciary?

**D Discussion and commission’s views on relevant issues:**

6. This commission holds that the plea of the Respondent seeking sine die adjournment does not hold water. The record on the file pertaining to Appeal No 060-06/19 in the case titled Mukhtar Ahmed Ali vs Supreme Court of Pakistan suggests that the maintainability of the Writ Petition No. 4284/2021 is under consideration of Honourable Islamabad High Court which means that it is at pre-admission stage. The question in this petition under consideration is whether the Registrar of the Honorable Supreme Court of Pakistan is competent to invoke the jurisdiction of the court and whether the same falls within the definition of aggrieved person in the context of Article 199 of the Constitution and not the Order of the Commission itself, at least at this stage. The pendency of a writ petition regarding the admissibility of another matter cannot be a valid ground to stop the Commission from performing its functions in other appeals before it.

7 This commission holds that the Registrar Office has not directly responded to the application for access to information which was filed under the Right of Access to Information Act 2017. Instead, it has simply forwarded policy of Hon'ble Supreme Court of Pakistan stated in letter dated 30.09.2014. This is primarily a letter 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 filed by the Appellant in the instant Appeal, in exercise of his fundamental right of access to information guaranteed by Article 19-A of the Constitution. Hence, the Registrar Office has not paid due consideration to the application and has not decided it on its own merits in the light of relevant provisions of law and the Constitution. This 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. This letter also asserts that "Constitution doesn't envisage oversight in any form/ manner by any other institution/ organ of the State on the functioning of the Courts".

8 This commission maintains 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. In the absence of any judgement of any of the High Courts, or, of the Supreme Court which bars citizens from seeking information from the Registrar, Islamabad High 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.

11. The honourable Islamabad High Court as a public institution performs two kinds of functions i.e., a) judicial functions and b) administrative functions pertaining to procurements and recruitments, involving public funds, like any other public institution.
12. 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.
13. 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.
14. 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.
15. Arguments that "the Superior Courts do publish Annual Reports on their working giving, amongst other things, the details of yearwise institution/disposal/pendency of cases for information of the general public" and that "Such reports as well as other necessary information pertaining to the composition of Courts, etc., are also available on the websites of the respective Courts" are in contravention to the spirit of the Act, 2017 and problematic on many counts. If these arguments are valid in the case of superior judiciary with regard to its administrative functions involving public funds pertaining to procurements and recruitments, the same arguments can be valid in the case of other public bodies for they all publish annual reports and share with citizens information what they deem fit to be shared. Furthermore, these arguments tantamount to restricting citizens' right of access to information in an arbitrary manner whereas Article 19-A allows putting in place "reasonable restrictions imposed by law", which have been duly imposed under the Act, 2017.
16. 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.
17. 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”.

- 18 Technology is a great leveler. 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.
- 19 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**

- 20 The Appeal is allowed. Worthy Registrar, Islamabad High Court is directed to designate Public Information Officer, as required under Section 9 of the Right of Access to Information Act, 2017, at the earliest, but not later than 7 working days of the receipt of this Order to respond to the request for information of the Appellant under the provisions of the Act, 2017.
- 21 Worthy Registrar, Islamabad High Court 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.
- 22 Copies of this Order be sent to Worthy Registrar, Islamabad High Court and the Appellant for information and necessary action.

**Mohammad Azam**

Chief Information Commissioner

**Fawad Malik**

Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on: June 28, 2022

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