JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : W.P. NO.2667-2022

Maj (R) Shahzad Saleem

Vs.

Federation of Pakistan etc.

Petitioners by	:	M/s Safdar Shaheen Pirzada, Ehtisham Aslam Khan, Nasir Mehmood Ch., Sheeza Manzoor & Farrukh Afzal, Advocates (W.P. No.2667-2022), M. Shoaib Shaheen (W.P. No.2872-2022), M/s Muhammad Rafay Maqsood, Senior Special Prosecutor & Jahanzeb Khan Bharwana, Additional Prosecutor General for NAB (W.P. Nos.2742-2022).
Respondents by	:	Hafiz S.A. Rehman & Muhammad Anwar Mughal for National Assembly Secretariat with Muhammad Farooq, Deputy Secretary (Litigation), National Assembly Secretariat, Islamabad. Mr. Rafay Maqsood, Senior Prosecutor NAB (W.P. No.2272-2023) for NAB. Mujahid Khan, Law Officer, NADRA (W.P. No.2272-2023) Mr. Munawwar Iqbal Duggal, Additional Attorney General, Mr. Ahsan Raza Kazmi, Deputy Attorney General & Mr. Azmat Bashir Tarar, Assistant Attorney General with Zahid Bhatti, Inspector, FIA (ACC).
Date of hearing	:	22.12.2023

AAMER FAROOQ C.J. This judgment shall decide instant writ petition as well as writ petitions mentioned in the Schedule attached herewith, as they are interlinked.

2. In all the writ petitions, the petitioners are aggrieved of the notices issued by Public Accounts Committee (PAC) for their attendance and/or directions issued by it. In this regard, in W.P. No.2667-2022, W.P. No.2872-2022 & W.P. No.2742-2022, on the complaint of one Tayyaba Gul, PAC issued notices to the petitioners and also required to attend the proceedings before it pursuant to the complaint. The referred notices were issued through Office Memorandum dated 28.06.2022 requiring the referred petitioners to appear on 07.07.2022. Subsequently, on 07.07.2022, in the minutes of the meeting, it was decided that the said petitioners should appear before Public Accounts Committee (PAC) and provide it certain information and also justify the contents of the complaint. The referred minutes of meeting dated 07.07.2022 have been called in question by National Accountability Bureau (NAB) through W.P. No.2742-2022. In W.P. No.4370-2022 & W.P. No.4836-2022, the petitioners are the employees of Pakistan Science

Foundation and are aggrieved of actions and directions issued by PAC. The petitioner in W.P. No.2272-2023 is an employee of NADRA Technologies Limited and is aggrieved of the directions by PAC.

3. Learned Additional Prosecutor General, NAB, appearing for NAB in W.P. No.2742-2022, *inter alia* contended it is not the domain of PAC to entertain a private complaint lodged by one Mrs. Tayyab Gul against the incumbents of NAB. It was submitted that function of PAC is purely to examine the accounts of the Organizations, to which, public funding is provided by the government exchequer and ancillary matters thereto; that allegation of sexual harassment and threats does not come within the domain of PAC. It was argued that PAC is a body/committee constituted through Rules of Procedure and Conduct of Business in the National Assembly, 2007 under the Constitution and its minutes are not protected in any way. In this regard, learned counsel made reference to a recent judgment of the Supreme Court reported as Pakistan Peoples Party Parliamentarian (PPPP) through its Secretary General and 4-others Vs. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and 4-others' (2022 PLD 574 Supreme Court), wherein it has categorically been held that immunity provided to the parliamentary proceedings is not universal and/or absolute but is restricted. It was contended that since the matter does not fall within the domain of PAC, hence issuance of notice, or calling of the petitioners/employees of NAB, on the complaint of one Mrs. Tayyaba Gul, is without lawful authority and beyond the jurisdiction of PAC.

4. Learned counsel for the petitioners in W.P. No.2667-2022 & W.P. No.2872-2022 endorsed the arguments of learned Additional Prosecutor General NAB and contended that calling of the employees of NAB is beyond the authority of PAC. It was submitted categorically that officials of NAB can be called by PAC for funding provided to it by the government or any matter related thereto, but not on the private complaint. In support of his contentions, learned counsel placed reliance on cases reported as Muhammad Zahid Akram Vs. Pakistan Agricultural Research Council (PARC) through its Chairman, Islamabad etc. (W.P. No.3228-2021), Nawab Khan Khattak Vs. Public Accounts Committee & Others (2002 YLR 2209), Nazir A.M. Joint Venture through Chief Executive Vs. The National Highway Authority through Chairman and 4 others (PLD 2020 Lahore 801), Decision of Lahore High Court dated 13.04.2022 in case titled Muhammad Hamza Shahbaz Sharif Vs. Province of Punjab and 4 others (W.P. Nos.21710 & 21711-2022), Muhammad Sibtain Khan and others Vs. Province of the Punjab etc (PLJ 2022 Lahore 675), Pakistan Muslim League Vs. Sardar Dost Muhammad Mazari and others (PLD 2022 Lahore 469).

5. Learned counsel for the petitioners in W.P No.4370-2022, W.P. No.4836-2022 & W.P. No.2272-2023 adopted the arguments by learned counsels mentioned above.

6. Learned counsel for PAC and National Assembly Secretariat *inter alia* contended that writ petitions are not maintainable on many counts; firstly, it was submitted that petitioners have no *locus standi* to file instant writ petitions, as no adverse order has yet been passed against them. It was contended that in the minutes of meeting, only it has been penned down to call them or make directions to FIA or other bodies to investigate the matter and nothing, as such, has been done; that on account of said fact, the petitioners are not aggrieved persons. It was submitted that even-otherwise, proceedings of PAC or other parliamentary committees are exempted from judicial scrutiny. In this regard, reference was made to Article 69 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution). It was submitted that under the referred Article, the proceedings of the Parliament, including its Committees, are privileged and drew attention of the Court towards Article 66(5) of the Constitution. Learned counsel further drew attention of the Court towards minutes of meeting of the PAC to highlight that officials of NAB were not only called pursuant to the complaint filed by Mrs. Tayyaba Gul, but also on account of other funding and accounting matters. Reference was made to cases reported as Lt. Col Farzand Ali and others Vs. Province of West Pakistan through the Secretary (PLD 1970 SC 98), Commodore Retd. Shamshad Vs. FBISE (PLD 2009 SC 75), Wasi Zafar Vs. Speaker, National Assembly (PLD 1990 Lhr 401), Nawab Khan Khattak Vs. Public Accounts Committee & Others (2002 YLR 2209), Muhammad Ali Vs. Additional IG Faisalabad and others (PLD 2014 SC 753), Brig. Retd. Imtiaz Ahmed Vs. Government of Pakistan and two others (1994 SCMR 2142), Muhammad Zahid Akram Vs. Pakistan Agricultural Research Council (PARC) through its Chairman, Islamabad etc. (W.P. No.3228-2021), Asif Ali Zardari Vs. FOP and others (PLD 1999 Karachi 54), Muneer Hussain Bhatti, Advocate and others Vs. FOP and others (PLD 2011 SC 407), Action against distribution of development funds by Ex-Prime Minister Raja Pervaiz Ashraf (PLD 2014 SC 131) and Atif Riaz Vs. Federation of Pakistan through Secretary, Ministry of Religious Affairs, Islamabad (PLD 2023 Lah. 536).

7. Learned Additional Attorney General also adopted the arguments by learned counsel for National Assembly Secretariat, but added that petitioners have an alternate remedy by way of making a reference/representation before the Speaker, National Assembly.

8. Submissions made by the parties have been heard and the documents, placed on record, examined with their able assistance.

9. Since an objection has been taken regarding maintainability of writ petitions with respect to Article 69 of the Constitution, hence the same is taken up first.

10. The issue of parliamentary privilege, as provided in Article 69 of the Constitution, was traced by this Court in case reported as Syed Yousaf Raza Gillani Vs. Federation of Pakistan etc. (2022 PLD Islamabad 326), in the following paragraphs:-

> *"9. Like many other countries, the constitutional scheme of Islamic Republic of Pakistan (Pakistan), is based on trichotomy of power viz that there are three organs of the State; the legislature, executive and the judiciary. This aspect of the Constitution and our system has been reiterated by the superior courts time and again; reliance is placed on case reported as* ***'Zia ur Rehman Vs. The State' (PLD 1973 SC 49)****. The underlined principle of this constitutional aspect of the governance in Pakistan means that no organ of the State should encroach on the domain and powers of the other State organ, however, judiciary though, as such, cannot encroach upon the powers and functions of the Legislature and/or Executive but has unique feature of exercising power/jurisdiction to check the actions/inactions of the executive by means of judicial review. This jurisdiction has been granted to the superior courts in Pakistan under Article 199 of the Constitution (in case of High Courts) and under Article 184 (in case of Hon'ble Supreme Court of Pakistan). The possession of jurisdiction of judicial review by the courts does not mean a 'blanket power' to examine the actions/inactions of the Executive rather it is subject to conditions and parameters laid down in the Constitution or conceived by the courts over a period of time in various pronouncements.*
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> *12. In case reported as* ***'Bradlaugh Vs. Gosset' (1884 QB 271)****, the decision of the Queen's Bench Division of the High Courts of England and Wales, Mr. Bradlaugh was elected in the House of Commons for Northampton and expected that that Speaker shall administer his oath for participating in the affairs of the House of Commons, however, the Speaker ousted him by calling Serjeant-at-Arms instead of administering oath; in this behalf, the House of Commons also passed a resolution. The matter was agitated in the court and it was observed that House of Commons is not subject to the control of Her Majesty's Courts in her administration of that part of the statute law which has relation to its internal proceedings and that the use of actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable; it was added that whatever may be the reasons of the House of Commons for their conduct, it would be impossible for us to do justice without hearing and considering those reasons, but it would be equally impossible for the House, with any regard for its own dignity and independence, to suffer its reasons to be laid before us for that purpose; it was noted that House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly. In case reported as* ***'Church of Scientology of California Vs. Johnson Smith'****, simply another decision of the Queen's Division Bench reported as* ***'Bradlaugh Vs. Gosset' (1884 QB 271)*** *was followed, as it was noticed that for modern purposes under Article 9 of the Bills of Rights, 1688, the freedom of speech and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament. In the House of Lords, the decision titled* ***'British Railways Board Vs. Pickin'****, the earlier decision regarding ouster of jurisdiction of the courts to impeach the proceedings of the Parliament, was upheld and followed. In a fairly recent judgment, the matter of questioning proceedings of the Parliament, came up before Supreme Court of United Kingdom in case titled* ***'R (On the application of Miller) Vs. The Prime Minister' [2019]UKSC 41****; in the judgment of the Court handed down by Lady Hale and Lord Reed, the issue involved was whether the advice given by the Prime Minister to Her Majesty the Queen on 27th or 28th August 2019 that Parliament should be prorogued from a date between 9th and 12th September until 14th October was lawful; one of the questions framed by the Court*

was whether the Prime Minister's advice to the Queens was justiciable in a court of law? United Kingdom Supreme Court noted that although the courts cannot decide political questions, the fact that a legal dispute concerns the conduct of politicians, or arises from a matter of political controversy, has never been sufficient reasons for the courts to refuse to consider it; it was cited with approval from the judgment of the Divisional Court that almost all important decisions made by the executive have a political hue to them; it was added that nevertheless the courts have exercised a supervisory jurisdiction over the decisions of the executive for centuries; many if not most of the constitutional cases in our legal history have been concerned with politics in that sense; the Court concluded that Prime Minister's advice to the Queens was justiciable; the reasoning of the Court, on the merits of the case as noted in paras 64 to 70, is as follows:-

"64. Article 9 provides:

> *"That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament."*

The equivalent provision in the Claim of Right of 1689, an Act of the Parliament of Scotland, is this:

> *"That for redress of all grievances and for the amending strenthneing and preserveing of the laws Parliaments ought to be frequently called and allowed to sit and the freedom of speech and debate secured to the members."*

65. The first point to note is that these are Acts of Parliament. It is one of the principal roles of the courts to interpret Acts of Parliament. A recent example of this Court interpreting article 9 is R v Chaytor [2010] UKSC 52; [2011] 1 AC 684. The case concerned the prosecution of several Members of Parliament for allegedly making false expenses claims. They resisted this on the ground that those claims were "proceedings in Parliament" which ought not to be "impeached or questioned" in any court outside Parliament. An enlarged panel of nine Justices held unanimously that MPs' expenses claims were not "proceedings in Parliament" nor were they in the exclusive cognisance of Parliament. There is a very full discussion of the authorities in the judgments of Lord Phillips of Worth Matravers and Lord Rodger of Earlsferry which need not be repeated here.

66. That case clearly establishes: (1) that it is for the court and not for Parliament to determine the scope of Parliamentary privilege, whether under article 9 of the Bill of Rights or matters within the "exclusive cognisance of Parliament"; (2) that the principal matter to which article 9 is directed is "freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place" (para 47). In considering whether actions outside the Houses and committees are also covered, it is necessary to consider the nature of their connection to those and whether denying the actions privilege is likely to impact adversely on the core or essential business of Parliament; (3) that "exclusive cognisance refers not simply to Parliament, but to the exclusive right of each House to manage its own affairs without interference from the other or from outside Parliament" (para 63); it was enjoyed by Parliament itself and not by individual members and could be waived or relinquished; and extensive inroads had been made into areas previously within exclusive cognisance.

67. Erskine May, Parliamentary Practice (25th ed 2019, para 13.12) is to similar effect:

> *"The primary meaning of proceedings, as a technical parliamentary term, which it had at least as early as the 17th century, is some formal action, usually a decision, taken by the House in its collective capacity. While business which involves actions and decisions of the House are clearly proceedings, debate is an intrinsic part of that process which is recognised by its inclusion in the formulation of article IX. An individual member takes part in a proceeding usually by speech, but also by various recognised forms of formal*

action, such as voting, giving notice of a motion, or presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking."

68. The prorogation itself takes place in the House of Lords and in the presence of Members of both Houses. But it cannot sensibly be described as a "proceeding in Parliament". It is not a decision of either House of Parliament. Quite the contrary: it is something which is imposed upon them from outside. It is not something upon which the Members of Parliament can speak or vote. The Commissioners are not acting in their capacity as members of the House of Lords but in their capacity as Royal Commissioners carrying out the Queen's bidding. They have no freedom of speech. This is not the core or essential business of Parliament. Quite the contrary: it brings that core or essential business of Parliament to an end.

69. This court is not, therefore, precluded by article 9 or by any wider Parliamentary privilege from considering the validity of the prorogation itself. The logical approach to that question is to start at the beginning, with the advice that led to it. That advice was unlawful. It was outside the powers of the Prime Minister to give it. This means that it was null and of no effect: see, if authority were needed, R (UNISON) v Lord Chancellor [2017] UKSC 51, para 119. It led to the Order in Council which, being founded on unlawful advice, was likewise unlawful, null and of no effect and should be quashed. This led to the actual prorogation, which was as if the Commissioners had walked into Parliament with a blank piece of paper. It too was unlawful, null and of no effect.

70. It follows that Parliament has not been prorogued and that this court should make declarations to that effect. We have been told by counsel for the Prime Minister that he will "take all necessary steps to comply with the terms of any declaration made by the court" and we expect him to do so. However, it appears to us that, as Parliament is not prorogued, it is for Parliament to decide what to do next. There is no need for Parliament to be recalled under the Meeting of Parliament Act 1797. Nor has Parliament voted to adjourn or go into recess. Unless there is some Parliamentary rule to the contrary of which we are unaware, the Speaker of the House of Commons and the Lord Speaker can take immediate steps to enable each House to meet as soon as possible to decide upon a way forward. That would, of course, be a proceeding in Parliament which could not be called in question in this or any other court".

As noted in the above judgment, the United Kingdom Supreme Court cited paragraphs from 'Erskine May's Treaties on the Law, Privileges, Proceedings and Usage of Parliament-24th Edition; as to the concept of 'Proceedings in Parliament' at pages 235 and 236, observed as follows:-

"Proceedings in Parliament

The terms 'proceedings in Parliament' has received judicial attention (not all of it in the United Kingdom) but comprehensive lines of decision have not emerged and indeed it has been concluded that an exhaustive definition could not be achieved. The primary meaning of proceedings, as a technical parliamentary terms, which it had at least as early as the seventeenth century, is some formal action, usually a decision, taken by the House in its collective capacity. While business which involves actions and decisions of the House are clearly proceedings, debate is an intrinsic part of that process which is recognized by its inclusion in the formulation of article IX. An individual Member takes part in a proceedings usually be speech, but also various recognized forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking.

On a number of occasions, the House of Commons or a committee has endeavored to elucidate this very broad understanding. The Select Committee on the Official Secrets Act in 1938-39 argued that 'proceedings' covered both the asking of a question and the giving of written notice of the question, and as a Member in a committee of either House, as well as everything said or done in either House

in the transaction of parliamentary business. After considering the scope of the protection, the committee concluded:

Cases may be easily imagined of communications between one Member and another or between a Member and a minister so closely related to some matter pending or expected to be brought before the House that, although they do not take place in the Chamber or a committee room, they form part of the business of the House, as for example where a Member sends to a minister the draft of a question, he is thinking of putting down, or shows it to another Member with a view to obtaining advice as to the property of putting it down or as to the manner in which it should be framed."

13. In so far as the Courts and Parliamentary Privilege' is concerned, it discusses the evolution of the concept of 'immunity' from impeachment of the proceedings from the courts and at page-291, it was concluded that in general, the judges have taken the view that when a matter is proceedings of the House, beginning and terminating within its own walls, it is obviously outside the jurisdiction of the courts.

14. The above set of judgments from the jurisdiction of United Kingdom can be used only as a guideline for interpreting the provisions of the Constitution inasmuch as in all above judgments, United Kingdom courts laid down the law on the basis of their conventions, practices and privileges in the country inasmuch as United Kingdom does not have a written constitution unlike Pakistan.

15. Before deliberating upon the judgments and arguments addressed before the Court, relevant constitutional provisions are summarized for the sake of brevity. Article 50 of the Constitution defines Majlis-e-Shoora (Parliament) as consisting of the President and two Houses to be known respectively as the National Assembly and the Senate; Article 59 of the Constitution provides for 'The Senate' consisting of 104 members and as per Article 60, after the Senate has been duly constituted, it shall, at its first meeting and to the exclusion of any other business, elect from amongst its members a Chairman and a Deputy Chairman and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Senate shall elect another member as Chairman or, as the case may be, Deputy Chairman; under Article 61 of the Constitution, the provisions of sub-clauses (2) to (7) of Article 53 are to apply mutatis mutandis; the fundamental Article, with respect to which the controversy in the case in hand involved, is Article 69, which reads as follows:-

"69. Courts not to inquire into proceedings of Majlis-e-Shoora Parliament).- (1) *The validity of any proceedings in Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of procedure.*

(2) *No officer or member of Majlis-e-Shoora (Parliament) in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order in Majlis-e-Shoora (Parliament), shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.*

(3) *In this Article, Majlis-e-Shoora (Parliament) has the same meaning as in Article 66".*

Moreover, under Article 53 (7) (c) of the Constitution, the Office of Speaker or Deputy Speaker shall become vacant, if he is removed from office by a resolution of the Assembly, of which not less than seven day's notice has been given and which is passed by the votes of the majority of the total membership of the Assembly; under Article 61 ibid, provisions of sub-clauses (2) to (7) of Article 53 shall apply to the case of Chairman and Deputy Chairman Senate, meaning thereby that a Chairman or Deputy Chairman of the Senate, can be removed from the office by a resolution of Senate of which less not than seven day's notice has been given and it is passed by the votes of the majority of the total membership of the Senate.

18. There are three judgments of Hon'ble Supreme Court of Pakistan, which are crucial to the determination of the controversy raised in the instant appeal, viz ***'Pakistan Vs. Ahmed Saeed Kirmani etc.' (PLD 1958 Supreme Court (Pak.) 397), 'Lt. Col. Farzand Ali and others Vs. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore' (PLD 1970 Supreme Court 98) and 'Muhammad Azhar Siddqiui and others v. Federation of Pakistan and others' (PLD 2012 SC 774),*** *as the three discuss the question of jurisdiction of the courts to scrutinize the proceedings of the Parliament.*

19. In case reported as ***'Pakistan Vs. Ahmed Saeed Kirmani etc.' [PLD 1958 Supreme Court (Pak.) 397]****, the Court had to consider various provisions of the Constitution of 1956 and the controversy revolved around the election of Speaker of the National Assembly. After taking stock of the case law from jurisdiction of United Kingdom and examining Erskine May's Treaties on the law, Privileges, Proceedings and Usage of Parliament- 24th Edition', the Hon'ble Supreme Court noted that the judges are therefore bound to take judicial notice of the parliamentary privileges and observed that each House has the control over its internal proceedings which is absolute and cannot be interfered with by the courts; it was added that the above conclusion is in line with the case law developed in United Kingdom based on Article 9 of Bills of Rights and which has its resemblance with Article 184 of the Constitution of 1956; it was added that the High Court only could have properly investigated as to the effect, whether proceedings impugned before it, fell within the concept of 'internal proceedings' of the provincial assembly, to which, the answer was in affirmative, as everything that happened, took place within the four corners of the assembly.*

*20. The second case, related to the controversy in hand, is '****Lt. Col. Farzand Ali and others v. Province of West Pakistan through the Secretary Department of Agriculture government of West Pakistan Lahore' (PLD 1970 SC 98)****; here again, the question was whether internal proceedings of assembly, relating to its business, are immuned from challenge before the courts. The judgment of the Hon'ble Supreme Court was handed down by Mr. Hamoodur Rehman, Chief Justice (as he then was) and after taking into account the case law on the subject from across the border and while interpreting Article 111 of the Constitution of 1962, earlier judgment reported as 'Pakistan Vs. Ahmed Saeed Kirmani etc.' [PLD 1958 Supreme Court (Pak.) 397], was cited with approval and it was observed that a proper business, with respect to internal proceedings of the House, enjoys immunity from challenge in courts, however, it was observed that question, relating to title of a person to be member of the House or continue to sit therein, is a question not pertaining to internal proceedings of the House.*

21. In case reported as ***'Muhammad Azhar Siddqiui and others v. Federation of Pakistan and others' (PLD 2012 SC 774)****, which incidentally, involved the appellant, the Speaker of National Assembly refused to send Reference to Election Commission of Pakistan with respect to disqualification of Syed Yousaf Raza Gillani, who at the relevant time, was the Prime Minister of the country and was disqualified pursuant to judgment of Hon'ble Supreme Court of Pakistan. The petition, in the referred case, was under Article 184(3) of the Constitution. The Hon'ble Supreme Court held Mr. Gillani as disqualified and directed the Election Commission of Pakistan to do the needful. During the course of proceedings, an objection was taken as to the maintainability of petition in light of Article 69 of the Constitution, which was not agreed with. The relevant paragraphs from the judgment are as follows:-*

"35. A survey of the above case-law makes it abundantly clear that the ruling of the Speaker is open to judicial scrutiny by the superior Courts because it does not fall within the proceedings or conduct of business of the Parliament within the contemplation of Article 69 of the Constitution. Thus, we hold that the ruling of the Speaker in the matter of referring the case to the Election Commission under Article 63(2) of the Constitution wherein a question of disqualification of a

Member of the Parliament has arisen, or where the Speaker decides that no such question has arisen, is amenable to the jurisdiction of the superior Courts. It may be noted that after the decision of the 7-member Bench dated 26 April, 2012, a copy of the judgment was forwarded by the office of this Court to the Speaker and in the meantime a petition was also filed by one Maulvi Iqbal Haider before the Speaker for making a reference to the Election Commission in terms of Article 63(2). However, on 24 May, 2012, a day before the expiry of the period of 30 days within which the Speaker had to decide the question in terms of Article 63(2), she gave a ruling that no question of disqualification of the respondent had arisen pursuant to his conviction by the Supreme Court. Admittedly, the judgment of this Court along with the covering letter was not made a part of the proceedings of the Parliament for the obvious reason that under Article 63(2) the Speaker's function is not part of the parliamentary process. Applying the test laid down in the judgments noted hereinabove and also considering the provision of the Constitution and the Rules of Procedure on the subject, we hold that ruling of the Speaker dated 25 May, 2012 does not fall within the "proceedings" of the Majlis-e-Shoora (Parliament) which cannot be subjected to judicial scrutiny by virtue of Article 69 of the Constitution. In light of the above discussion, the objection raised by respondent's counsel is not tenable and is overruled.

36. Suffice it to observe that the Speaker, in performing the function assigned to him under Article 63, has to decide whether there is any determination by a Court of competent jurisdiction in respect of any of the disqualifications mentioned in clause (1) thereof, e.g., whether a person is of unsound mind and has been so declared by a competent court, etc. In this case, the Speaker is required to consider the judgment of the concerned Court. Secondly, in the case of disqualification which is not emanating from a judgment of a Court of law, the Speaker has to decide the matter on the basis of the information laid before her, e.g., where a person has become undischarged insolvent, or he has ceased to be a citizen of Pakistan, or has acquired the citizenship of a foreign State, or he holds an office of profit in the service of Pakistan, or is in the service of any statutory body, or is dismissed from service, etc.

Subsequent to the above judgment, the Supreme Court of Pakistan in case reported as Pakistan Peoples Party Parliamentarian (PPPP) Vs. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad (2022 PLD 574 Supreme Court), has held that parliamentary privilege in Pakistan is not absolute under the Constitution. The law, as it stands under Article 69 ibid, is different from the law contained in the previous two Constitutions of Pakistan. The bare reading of the referred Article shows that the validity of any proceedings in Majlis-e-Shoora (Parliament) shall not be called in question on the ground of any irregularity of procedure. The immunity, so provided, is confined only to the extent of irregularity in procedure. With respect to other legal/jurisdictional defects regarding business of Parliament or any of its Committees, the same can be looked into by the courts under Article 199 of the Constitution, as it was done by the Supreme Court, whereby it examined the Ruling of the Speaker of National Assembly under Article 184(3) of the Constitution in the referred judgment. Undoubtedly, under Article 66 (5) of the Constitution, the immunity and privilege available to the Parliament, is also available to its Committees, however, that also is

restricted only to the extent of irregularity in procedure and it is not blanket or absolute. The Supreme Court, in the referred judgment, observed as follows:-

> *45. The cited definition shows that substantive law creates, defines and regulates rights conferred on persons whereas procedural law provides the machinery that needs to be put in motion for the realisation of these rights. Prior to the present Constitution, the Superior Courts were barred from intervening in the proceedings of Parliament even if these were violative of the Constitution. However, the Constitution has now empowered the Superior Courts to examine and adjudicate the validity of proceedings in Parliament if these contravene the substantive or procedural provisions of the Constitution. Therefore, post-1973 the Constitution has removed the erstwhile absolute immunity granted to parliamentary proceedings from judicial scrutiny. Instead violations of constitutional provisions are now justiciable. This change in the law perhaps reflects a truer realisation of the doctrine of trichotomy of powers. The Court in Nazar Abbas Jaffri v. Secretary to Government of the Punjab (2006 SCMR 606) explained this doctrine as follows:*
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> *"7. ...The scheme of our Constitution is based on Trichotomy as is held by this Court in Zia-ur-Rehman's case PLD 1973 SC 49. In the system of Trichotomy, the Judiciary has the right to interpret, the Legislator has right only to legislate and the Executive has to implement..." (emphasis supplied)*
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> *46. The quoted observation expresses in compact form the doctrine of trichotomy of powers. However, the rigid application of the doctrine fails to cater to the modern day political and legal reality of most democratic systems of government under a written Constitution. The limits of authority, power and jurisdiction of the three branches of the State under our written Constitution was examined by the Court in State v. Zia-ur-Rahman (PLD 1973 SC 49) :*
> *" ...As the learned Attorney-General has himself conceded, in the case of a Government set up under a written Constitution, the functions of the State are distributed amongst the various State functionaries and their respective powers defined by the Constitution. The normal scheme under such a system, with which we are familiar, is to have a trichotomy of powers between the executive, the Legislature and the judiciary...*
> *In all such cases, it will also be the function of the constitution to define the functions of each organ or each branch of an organ, as also specify the territories in which, the subjects in respect of which and sometimes even the circumstances in which these functions will be exercised by each of these organs or sub-organs. Limitations would, therefore, be inherent under such a system so that one organ or sub-organ may not encroach upon the legitimate field of the other... It cannot, therefore, be said that a Legislature, under a written Constitution, possesses the same powers of "omnipotence" as the British Parliament. Its powers have necessarily to be derived from, and to be circumscribed within, the four corners of the written Constitution."*
> *(emphasis supplied)*
> *Therefore, our Constitution circumscribes the limits of jurisdiction and authority available to each of the three limbs of the State under the doctrine of trichotomy of powers. Whilst Courts will ordinarily exercise restraint and not enter into the domains of the Legislature and the Executive, they will intervene when either of these branches overstep their constitutionally prescribed limits. This approach is recognised by the judgment in Jurists Foundation v. Federal Government (PLD 2020 SC 1):*

> *"46. Judicial restraint in its substantial approach urges Judges considering constitutional questions to give deference to the views of the elected branches and invalidate their actions only when constitutional limits have clearly been violated..."*
> *(emphasis supplied)*
> *It only stands to reason that in our system of government the Constitution is supreme. Therefore, the immunity granted to proceedings in Parliament are made subject to its provisions".*

11. The National Assembly framed its Rules under Article 67 of the Constitution, which now, are termed as 'Rules of Procedure and Conduct of Business in the National Assembly, 2007' (the Rules). Under Rule 198, in addition to the Standing Committees on Public Accounts, Rules of procedure and privileges, House and Library, Government Assurances and Business Advisory, there shall be a Standing Committee of the Assembly for each Ministry of the Government. Rule 199 ibid provides for general functions of the Standing Committees which provides that except as otherwise provided in the rules, the Assembly or the Speaker may remit to the Standing Committee any subject or matter with which it is concerned and the Standing Committee shall study such subject or matter with a view to suggest legislation or making recommendations to the Assembly. More specific functions of the Committees are provided in Rule 201 ibid, which reads as follows:-

> "***201. Functions.***- *(1) A Committee shall examine a Bill, subject or matter referred to it by the Assembly or the Speaker and shall submit its report to the Assembly or to the Speaker, as the case may be with such recommendations including suggestions for legislation, if any, as it may deem necessary. In the case of a Bill, the Committee shall also examine whether the Bill violates, disregards or is otherwise not in accordance with the Constitution.*
> *(2) The Committee may propose amendments which shall be shown in its report along with original provisions of the Bill;*
> *Provided that the Committee shall have no power of preventing the Bill from being considered by the Assembly.*
> *(3) If a Committee does not present its report within the prescribed period, or the time allowed, the Assembly may consider the Bill, subject or matter referred to it, without waiting for the report upon a motion by any member or by the Minister concerned and such Bill, subject or matter shall be treated as withdrawn from the Committee.*
> *(4) A Committee may examine the expenditures, administration, delegated legislation, public petitions and policies of the Ministry concerned and its associated public bodies and may forward its report of findings and recommendations to the Ministry and the Ministry shall submit its reply to the Committee.*
> *(5) Public petitions may be presented on a Bill which has been introduced, or any matter connected with the business pending before the House, or any matter of general public interest which is primarily the concern of the Government, provided that it is not one which falls within the cognizance of a court, nor shall it relate to a matter pending before any court or other authority performing judicial or quasi-judicial functions.*
> *(6) Each Standing Committee shall scrutinize and suggest amendments, if necessary, and recommend Ministry's Public Sector Development Program (PSDP) for the next financial year before the same is sent to the Ministry of Finance for including in the Federal Budget for the next financial year. Each Ministry shall submit its budgetary proposals relating to the Public Sector Development Program (PSDP) for the next financial year to the relevant Standing Committee*

not later than the 31st January of preceding financial year and Standing Committee shall make recommendations thereon not later than the 1st March of preceding financial year:

Provided that where such recommendations are not made by the 1st March, the same shall be deemed to have been endorsed by the Standing Committee".

The examination of the referred Rules shows that the PAC is to undertake all the functions as are prescribed including examination of petitions presented on a Bill which has been introduced, however, shall not take into account any matter which is within the cognizance of the court nor shall relate to any matter pending before any court or authority performing judicial or quasi-judicial functions. The functions of Public Accounts Committee are provided in Rule 203, which is reproduced below:-

"***Functions.***- *(1) The Committee shall examine the accounts showing the appropriation of sums granted by the Assembly for the expenditure of the Government, the annual finance accounts of the Government, the report of the Auditor-General of Pakistan and such other matters as the Minister for Finance may refer to it.*

(2) In scrutinizing the appropriation accounts of the Government and the reports of the Auditor-General of Pakistan thereon it shall be the duty of the Committee to satisfy itself-

a) that the moneys shows in the accounts as having been disbursed were legally available for, and applicable to the service or purpose to which they have been applied or charged;

b) that the expenditure conforms to the authority which governs it; and

c) that every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by the Ministry of Finance.

(3) It shall also be the duty of the Committee-

a) To examine the statement of accounts showing the income and expenditure of state corporations, trading and manufacturing schemes, concerns and projects together with the balance sheets and statements of profit and loss accounts which the President may have required to be prepared or are prepared under the provisions of the statutory rules regulating the financing of a particular corporation trading or manufacturing scheme or concern or project and the report of the Auditor-General of Pakistan thereon;

b) To examine the statement of accounts showing the income and expenditure of autonomous and semi-autonomous bodies, the audit of which may be conducted by the Auditor-General of Pakistan either under the directions of the President or under an Act of Majlis-e-Shoora (Parliament); and

c) To consider the report of the Auditor-General of Pakistan in cases where the President may have required him to conduct the audit of any receipt or to examine the accounts of stores and stocks.

(4) If any money has been spent on any service during a financial year in excess of the amount granted by the Assembly for that purpose, the Committee shall examine with reference to the facts of each case the circumstances leading to such an excess and make such recommendation as it may deem fit.

(5) The report of the Committee shall be presented within a period of one year from the date on which reference was made to it by the Assembly unless the Assembly, on a

motion being made, directs that the time for the presentation of the report be extended to a date specified in the motion:

Provided that extension in time the time for the presentation of the report shall be asked for before the expiry of the time allowed under the rule:.

The reading of the functions of the PAC shows that same are confined only to examine all expenses and budgetary and related matters and nothing beyond; it has no function whatsoever to either summon on complaint of sexual harassment anyone or on the issues relating to service, or issue directions or refer the matter to some other Organization.

12. In somewhat similar circumstances, where the court had rendered a judgment as to the employees of Pakistan Agricultural Research Council, PAC directed PARC to reinstate those employees, which matter came up for consideration before this Court in case titled Muhammad Zahid Akram Vs. Pakistan Agricultural Research Council (PARC) through its Chairman, Islamabad etc. (W.P. No.3228-2021) and this Court, while penning down the controversy, examined the position of law, which is as follows:-

"5. The Scheme of the Constitution of the Islamic Republic of Pakistan of Pakistan, 1973 (hereinafter referred to as the 'Constitution') is based on the principle of trichotomy of powers. The respondent Council has been established under the Pakistan Agricultural Research Council Ordinance, 1981 (hereinafter referred to as the 'Ordinance of 1981'). A plain reading of the Ordinance of 1981 as a whole shows that it is self-contained comprehensive statute, promulgate to establish and recognize the respondent Council. Section 3(2) has declared the status of the respondent Council as a body corporate and that it shall sue or be sued in its own name. Section 5 provides that the Federal Government may issue directives and orders regarding questions of policy. Section 15 empowers the respondent Council to appoint officers and staff. It is noted that the Public Accounts Committee has been constituted under rule 202 of the Rules of Procedure and Conduct of Business of the National Assembly, 2007 (hereinafter referred to as the 'Rules of 2007. Rule 203 describes the functions of the Public Accounts Committee. The Constitution nor the Rules of 2007 empowers the Majlis-e-Shoora (Parliament) nor the Public Accounts Committee to interfere with or give any direction regarding the executive powers of the respondent Council under section 15 and 16 of the Ordinance of 1981. Such interference, direction or order besides being ultra vires the Ordinance of 1981 would tantamount to breach of the principle of trichotomy of powers embedded in the Constitution. Even the Prime Minister nor the Federal Government have the jurisdiction to interference with the powers vested in the respondent Council otherwise than as provided under the Ordinance of 1981".

13. Similarly, the question of parliamentary privilege was examined by Lahore High Court in case reported as Nazir A.M. Joint Venture through Chief Executive Vs. The National Highway Authority through Chairman and 4 others (PLD 2020 Lahore 801), wherein it was held that Public Accounts Committee of National Assembly was a recommendatory Committee which was required to examine the accounts of relevant year and to make recommendations.

14. Similar observations were made by Peshawar High Court in case reported as Nawab Khan Khattak Vs. Public Accounts Committee & Others (2002 YLR 2209) and it was observed that Public Accounts Committee cannot take action against the government official; at the most, it can recommend action to the government and the latter then take action in accordance with law on the subject and not otherwise.

15. Learned counsel for National Assembly Secretariat and Public Accounts Committee also objected to the maintainability of the petitions on account of the fact that these petitions are in the nature of *certiorari* and till such time that any adverse order is passed against the petitioners, no writ can be issued. Reference was made to case reported as Atif Riaz Vs. Federation of Pakistan through Secretary, Ministry of Religious Affairs, Islamabad (PLD 2023 Lah. 536). The reading of the above judgment shows that Lahore High Court, while interpreting writ of *certiorari*, observed that in exercise of jurisdiction by High Court under Article 199, it is empowered to interfere in all cases of excess of jurisdiction, whether the person exceeding jurisdiction is a Court, a judicial or a quasi-judicial body or a purely executive or administrative Tribunal or officer. In case reported as Utility Stores Corporation Vs. Punjab Labour Appellate Tribunal (PLD 1987 SC 447), the Supreme Court held that where Labour Appellate Tribunal had no jurisdiction, the High Court erred in reading the order as just and proper, which it could not, in absence of a legal right having been violated. In case reported as Teredata Ireland Limited Vs. Federation of Pakistan (2020 PTD 1316), this Court elucidated the nature of writ of *certiorari* and observed as follows:

> *"23. In the petition at hand, the petitioners are seeking the issuance of a writ of certiorari. Certiorari is not a writ of right, but one of discretion. Its object is to curb excess of jurisdiction and to keep inferior Courts and Tribunals within their bounds. The High Court, while judicially reviewing the proceedings and judgments of the inferior Courts and Tribunals, cannot substitute its own decision with that of such inferior Courts or Tribunals. The grounds on which certiorari may be invoked is where there is an error of law apparent on the face of the record, and not every error either of law or fact which can be corrected by the appellate authority. The High Court, while issuing a writ of certiorari, acts in exercise of a supervisory and not appellate jurisdiction. The High Court will not judicially review findings of fact reached by an inferior Court or a Tribunal unless there is manifest error apparent on the face of the proceedings, or where such findings are in disregard of the provisions of law. As regards the concurrent orders passed by respondents Nos.4 and 5, I am of the view that the essential prerequisites for issuing a writ of certiorari qua the impugned orders dated 15.09.2011 and 30.06.2011 do not appear to be satisfied in this case".*

In case reported as Nagina Silk Mill, Lyallpur Vs. The Income Tax Officer, A-Ward Lyallpur (PLD 1963 Supreme Court 322), the Supreme Court explained the scope of writ of *certiorari* at page-327 in the following terms:-

> *"At the same time, it was held that in cases of absence of excess of jurisdiction or where the impugned order suffers from illegality on the face of the record, a certiorari may be granted even though the right of statutory appeal had not been availed of. A certain amount of flexibility is allowed by the law in the case of a prayer for a writ of certiorari as compared with a case for a mandamus. It was further observed that if the application for ex debito justititae and the High Court has not the general discretion which it would have, when the application is made by a member of the public, who is not personally concerned. This would specially be the case where the alternate remedy provided by the relevant statutes is not as efficacious, speedy or convenient as the one available under the writ jurisdiction of the High Court. This principle would be found discussed in Ferris on Extraordinary Legal Remedies at pp.185-187, 1926 Edn. That relief in these cases could not have been obtained as quickly or with as such facility and convenience under the Act which provides for a serious of appeals, revision and reference to the High Court on law points, on condition that the tax assessed in first paid, as by recourse to the writ jurisdiction of the High Court, can hardly be contested. It is at the same time conceded that the Income-tax Officer was required to act judicially in applying the provisions of the Act".*

In fact, the petitioners are aggrieved of the excess of jurisdiction by PAC; it decided to summon the officials of NAB on complaint of Mrs. Tayyaba Gul and also with respect to other petitioners by issuing direction with respect to service matters; such excess of jurisdiction can always be a subject matter of a writ petition and the relevant person, who is aggrieved of assumption of jurisdiction or exercise of excess jurisdiction by any organization, body or authority, does not have to wait for the final order, but can always invoke jurisdiction of this Court under Article 199 of the Constitution and seek remedy against it. Reference is made to cases reported as Town Committee, Gakhar Mandi Vs Authority Under the Payment of Wages Act Gujranwala and 57-others (2002 PLD Supreme Court 452) and judgment of this Court reported as Kinza Anwar Vs. Office of the Ombudsman for Protection against Harassment of Women at the Work Place and others (2022 CLC 1477).

16. Along with above argument and observations, objection of learned counsel for National Assembly Secretariat and Public Accounts Committee was made regarding *locus standi* of the petitioners that they are not aggrieved persons; in fact, petitioners are aggrieved persons, as they are aggrieved of the assumption of jurisdiction and exercise of same in excess of law.

17. In so far as merits of the matter are concerned, direction issued with respect to employees of petitioners in W.P. No.2272-2023, W.P. No.3836-2022 & W.P. No.4370-2022, is beyond the functions of PAC which are reproduced and noted above; likewise, calling the officials of NAB on the complaint of Mrs. Tayyaba Gul regarding allegations of sexual harassment, does not fall within the purview of PAC and when it decided to take

action or issue notice or direction, it clearly exceeded its authority/jurisdiction as provided in Rule 203 of the Rules.

18. Another objection was raised by learned Additional Attorney General that petitioners have alternate remedy by way of making representation to the Speaker, National Assembly, however, such objection has no legs to stand inasmuch as it is trite law that where there is question of jurisdiction and absence or excess thereof, alternate remedy is not relevant. Reliance is made to case reported as The Burmah Oil Company (Pakistan Trading) Chittagong Vs. The Trustees of the Port of Chittagong (PLD 1962 SC 113).

19. In view of foregoing, instant petitions are allowed and Office Orders dated 28.06.2022 as well as minutes of meeting of PAC dated 07.07.2022 to the extent of calling of petitioners on the complaint of Mrs. Tayyaba Gul, are set aside; the directions issued and actions taken by PAC in W.P. No.2272-2023, W.P. No.4836-2022 & W.P. No.4370-2022, are set aside.

20. Since the writ petitions stand decided, all the applications made therein, are also disposed of accordingly.

(CHIEF JUSTICE)

Announced in Open Court on 17-01-2024

(CHIEF JUSTICE)

Zawar

Serial No.	CASE NO./YEAR	TITLE
1.	W.P. No.2742-2022	National Accountability Bureau through its Acting Chairman, Islamabad Vs. Federation of Pakistan etc.
2.	W.P. No.2872-2022	Javed Iqbal, Chairman Commission of Inquiry on Enforced Disappearance and former Chairman, NAB, Islamabad Vs. Federation of Pakistan etc.
3.	W.P. No.4370-2022	Dr. Mirza Habib Ali Vs. Ministry of Science and Technology through its Secretary, Islamabad etc.
4.	W.P. No.4836-2022	Dr. Muhammad Akram Sheikh Vs. Ministry of Science and Technology through its Secretary, Islamabad etc.
5.	W.P. No.2272-2023	Tahir Akram Vs. Federation of Pakistan etc.