



RULING OF THE CHAIR

Delay in laying of Ordinance

In the present case, this Ruling stems from the following amongst other facts and grounds,-

- (i) The Capital Development Authority (Amendment) Ordinance, 2018 (Ordinance No. I of 2018) herein after referred to as, “the Ordinance”, was promulgated by the President of Pakistan on 10th January, 2018 and published in the Official Gazette on 11th January, 2018.
- (ii) “The Ordinance” was laid in the National Assembly on 12th February, 2018, and it is on today’s Orders of the Day of the Senate sitting in terms of the Government Business transmitted vide letter no. F 1(3) 2017-PA (Senate) dated 13th February in the Senate.
- (iii) 272nd Session of the Senate was summoned by the President on 22nd January, 2018, which was prorogued on 26th January, 2018.

2. The Constitution of Pakistan, 1973, empowers the President to promulgate an Ordinance in certain circumstances. An Ordinance promulgated by the President under Article 89 of the Constitution, 1973, is required to be laid before the National Assembly, in case of a Money Bill, under sub-para (i) of para (a) of clause (2) of Article 89 and before both Houses of Parliament if it does not relate to matter specified in clause (2) of Article 73, in terms of sub-para (ii) of para (a) of clause (2) of Article 89 of the Constitution, 1973.

3. Relevant constitutional provision i.e. Article 89 and the relevant Rules i.e. Rule 145 of the Rules of Procedure and Conduct of Business in the Senate, 2012, are reproduced as under;

“Article 89.

“89. Power of President to promulgate Ordinances.- (1) The President may, except when the (Senate or) National Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require.

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of [Majlis-e-Shoora (Parliament)] and shall be subject to like restrictions as the power of [Majlis-e-Shoora (Parliament)] to make law, but every such Ordinance –

(a) shall be laid –

(i) before the National Assembly if it [contains provisions dealing with all or any of the matters specified in clause (2) of Article 73], and shall stand repealed at the expiration of four months from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution;

Provided that the National Assembly may by a resolution extend the Ordinance for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution:

Provided further that extension for further period may be made only once.

(ii) before both Houses if it does not contain provisions dealing with any of the matters referred to in sub-paragraph (i)], and shall stand repealed at the expiration of (one hundred and twenty days) from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon the passing of that resolution;

Provided that either House may by a resolution extend it for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by a House, upon the passing of that resolution:

Provided further that extension for a further period may be made only once; and)

(b) may be withdrawn at any time by the President.

(3) Without prejudice to the provisions of clause (2),

(a) *an Ordinance laid before the National Assembly under sub-paragraph (i) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the National Assembly; and*

(b) *An Ordinance laid before both Houses under sub-paragraph (ii) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the House where it was first laid."*

"Rule 145, Rules of Procedure and Conduct of Business in the Senate, 2012"

"145. Resolution for the disapproval or extension of Ordinances.- (1) *On the commencement of a session, as soon as may be but not later than ten days after the commencement of the session, all Ordinances referred to in sub-paragraph (ii) of paragraph (a) of clause (2) of Article 89 of the Constitution, made after prorogation of the last session, shall be laid on the Table.*

(2) *A member may move a resolution for disapproval of an Ordinance or a member or a Minister may move a resolution for extension of an Ordinance under sub-paragraph (ii) of paragraph (a) of clause (2) of Article 89 of the Constitution after giving three working days' notice of his intention to do so _____."*

4. Previously, suchlike matter came under consideration of the House wherein, an Ordinance titled as "The National Command Authority (Amendment) Ordinance, 2016" was laid before the Senate with the delay of 92 days. The House considered the matter by formulating a question in the following terms:-

"what is the effect of an Ordinance being laid after 92 days of its promulgation on the rights, privileges and functions of the Members of Parliament?"

5. In view of the legal and factual position read with the intent of the legislature, a Ruling dated 25th July, 2016, was given by the Chair, in the following terms:-

"i) *A Member of Parliament, has a right to move for disapproval of an Ordinance, when it does not contain provisions relating to clause (2) of Article 73 of the Constitution, 1973, which can only be exercised after it has come to the knowledge of the Parliament that an Ordinance has been promulgated when the House was not in session, or;*

ii) *A Member of the National Assembly has the right to move for disapproval of Ordinance, when it falls within the ambit of clause (2) of Article 73 of the*

Constitution, 1973, which can only be exercised after it has come to the knowledge of the National Assembly that an Ordinance has been promulgated when the House was not in Session,

- iii) Delay of each day results in denying the right to move for disapproval of an Ordinance, which amounts to restricting Members to discharge their constitutional duties and obligations, hence, amounts to breach of Privilege of the House or Houses and its Members.*

In view of the above, the Government is directed to adhere to the Constitution and the Rules framed therein, while laying an Ordinance in terms of clause (2) of Article 89 of the Constitution, 1973 and adopt following procedure:-

- i) An Ordinance shall be laid on the first day of the sitting of the House held after the promulgation of the said Ordinance on which formal Government business is to be transacted.*
- ii) The Government shall lay alongwith the Ordinance reasons that necessitated the President to promulgate the Ordinance.*
- iii) The House can condone the delay in laying the said Ordinance, however, such delay shall not be more than 10 days for which reasons for delay of each day in laying of the Ordinance shall be explained by the Minister concerned in the House.*

6. In the instant case, in terms of the Article 89, Constitution, 1973 read with rule 145 of the Rules of Procedure and Conduct of Business in the Senate, 2012 and Ruling of the Chair dated 25th July, 2016, “the Ordinance” was due to be laid before the Senate on 23rd January, 2018, which was the first day of the sitting of the House held after the promulgation of the said Ordinance on which formal Government business was to be transacted. Contrary to this, the Ordinance is proposed to be laid on 14th February, 2018, with the delay of 23 days (as counted from 23rd January, 2018).

7. In view of the aforementioned legal and factual position, the Minister of State for Capital Administration and Development Division is directed to explain, with substantive reasons, delay of every single day since 23rd January, 2018 within two days.

8. The Secretariat is directed to bring "the Ordinance" on the Orders of the Day for the Senate sitting to be held on 16th February, 2018.



(MIAN RAZA RABBANI)

NI

CHAIRMAN

Dictated in the Chamber

Announced in the House on 14th February, 2018.