



RULING OF THE CHAIR

DISCUSSION ON SUB JUDICE MATTER

The necessity of this detailed Ruling stems from the contention raised by the Minister for Law and Justice that the discussion on the Orders of the Day pertaining to and dealing with the JIT Report can not be proceeded with as the matter is *sub judice* and being currently argued before the Supreme Court of Pakistan. He placed reliance on paragraph (g) of sub-rule (4) of rule 134 of the Rules of Procedure and Conduct of Business in the Senate, 2012, hereinafter referred to as "The Rules, 2012". The brief facts are asunder;

- (i) That on 10th July, 2017, a requisition signed by 30 Members of the Opposition was received in the Senate Secretariat alongwith a 14 points agenda. The discussion on the JIT Report was placed at Sl. No. 9 of the agenda.
- (ii) That in terms of clause (3) of Article 54, Constitution, 1973, I summoned the Senate to meet on 17th July, 2017.
- (iii) That on the 17th of July, 2017, before the commencement of the Session, a House Business Advisory Committee meeting was held, wherein the agenda items and their clubbing together was discussed in detail.
- (iv) In the said meeting the Leader of the House raised the issue that the matter is *sub judice*. It was clarified by the Chair that detailed discussion of the Report is taking place in all stratus of society and being extensively reported in the print, electronic and social media and detailed analysis in the form of articles are being published with reference to

the same. Therefore, it will not be appropriate if the Members of the Senate are denied the right to discuss it. The House Business Advisory Committee decided to take up the said Agenda item.

- (v) That in the light of the above, the Orders of the Day issued for the 18th July, 2017, carried the said agenda item.
- (vi) That in the sitting of the 19th July, 2017, when the said agenda item, which was marked as Order No. 9(iii) on the Orders of the Day, was about to be taken up, but on the request of the Leader of the Opposition was deferred for the sitting on the 20th July, 2017. At this stage the Minister for Law and Justice drew the attention of the Chair to the requirements of paragraph (g) of sub-rule (4) of rule 134 of "The Rules, 2012", more fully described hereinabove.

2. The question arises that whether a matter decided in the House Business Committee can be reagitated on the floor of the House and as to what is the effect of paragraph (g) of sub-rule (4) of rule 134 of "The Rules, 2012".

3. The JIT Report involves a sensitive matter of national political importance and therefore, I will not dispose of the pointation of the Minister for Law and Justice towards the said rule on a mere technicality of it having been already decided upon in the House Business Advisory Committee.

4. In the sitting dated the 19th July, 2017, after the Minister for Law and Justice brought to my attention the said rule I have made certain observations in the House which are part of the record, the same may be read in extenso to this Ruling and the relevant portion of the verbatim be attached and marked as "Annexure-A".

5. Owing to the sizzling environment in the country, I deem it

necessary to put in writing the reasons which have compelled me to rely on the proviso of paragraph (g) of sub-rule (4) of rule 134 of "The Rules, 2012". The said sub-rule and proviso are reproduced herein asunder;

"(4) It shall not:

- (a) Contain arguments, inferences, ironical expressions or defamatory statements;
- (b) be vague, trivial or vexatious in form or content;
- (c) refer to the conduct or character of a person except in his official or public capacity;
- (d) raise discussion which is detrimental to public interest;
- (e) contain reflection on the President or a Judge of the Supreme Court or of a High Court; or
- (f) raise discussion on a matter which in its nature is secret or sensitive; and
- (g) relate to any matter which is pending before any court or other authority performing judicial or quasi-judicial functions:

Provided that the Chairman may, in his discretion, allow such matter being raised in the Senate as is concerned with the procedure or subject or stage of enquiry if he is satisfied that it is not likely to prejudice the consideration of the matter by such court or authority and is not inconsistent with any other rule." (emphasis provided)

6. The proviso provides discretion to the Chair to allow discussion on a matter which is subjudice before a Court of Law, body or Authority provided that he is satisfied that it would not affect the course of the proceedings. This proviso draws its strength from various foreign jurisdictions dealing with or pertaining to the right of speech including on matters pending before Courts of Law. Reliance is based on M. N. Kaul, Seventh Edition, at page 1191, which is reproduced asunder;

"While applying the restrictions regarding the rule of sub judice, it has to be ensured that the primary right of freedom of speech is not unduly impaired to the prejudice of the Legislatures."

7. In the instant case the composition, conduct and findings of the JIT constituted by the Supreme Court of Pakistan in the matter of Mian Nawaz Sharif and his family has been the subject matter of public debate from the moment the Supreme Court passed its order dated 20th April, 2017.

8. It is a matter of record that those summoned to appear before the JIT after appearing have made statements before the press. The electronic, print and social media have carried out critical detailed analysis of the proceedings.

9. That after the submission of the Report by the JIT to the Supreme Court on 10th July, 2017, Government functionaries, respondents, petitioners, political parties, lawyers and intellectuals have been carrying out an extensive post mortem of the findings given by the said JIT. To the extent that certain Government functionaries have made charts and presentations to further their point of view before the media.

10. The said Report consists of 10 volumes and 9 of the said volumes were made public by the Supreme Court on the 10th July, 2017, subsequently the Report was uploaded on the website of the Supreme Court of Pakistan on 14th July, 2017.

11. It is relevant to point out that the agenda item seeks a discussion on the JIT Report and not of the proceedings of which the Supreme Court is seized of. It will be a travesty of the right to speak of a Member of Parliament if in the aforesaid circumstances when the entire nation is engulfed in this debate, I, being the custodian of their rights and privileges, do not use my discretion in terms of proviso to paragraph (g) of sub-rule (4) of rule 134 of "The Rules, 2012" as freedom of speech is a primary right whereas the rule of *sub judice* is a self imposed restriction.

So where need be, the latter must give way to the former. Therefore I am satisfied that a discussion on the said agenda item in the circumstances will not prejudice the consideration of the matter by the Supreme Court.



MIAN RAZA RABBANI
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Chairman Senate

Dictated in Chamber
Announced in the House on 20th July, 2017.
264th Session