



RULING OF THE CHAIR

Summoning of Joint Sitting of Parliament under Article 70(3) of the Constitution of Pakistan, 1973

This Ruling arises from two letters, Nos.F.8(8)/2015-PA(NA) and F.8(55)/2013-PA(NA), dated 15th July, 2015, of the Ministry of Parliamentary Affairs addressed to the Secretary of the Ministry of Overseas Pakistanis and Human Resource Development Division and Secretary Establishment Division respectively. Both letters have been endorsed to the Senate Secretariat for information purposes. Through these letters the Ministry of Parliamentary Affairs has advised the two Divisions to take necessary action under rule 28 of the Rules of Business, 1973, (hereinafter referred to as the "Rules, 1973"), on the request made by the Chairman Senate of Pakistan to the President of the Islamic Republic of Pakistan under clause (3) of Article 70 of the Constitution, 1973, read with sub-rule (7) of the rule 126 and rule 127 of the Rules of Procedure and Conduct of Business in the Senate, 2012, (hereinafter referred to as the "Rules, 2012").

2. The brief facts in the in the first of the two cases/letters are as under:-

- A(i) Senator Maula Bux Chandio, as he then was, gave notice of a Private Member's Bill on 10-9-2013, titled the Immigration (Amendment) Bill, 2013.
- (ii) The Bill was introduced and referred to the concerned Standing Committee on 28-10-2013. The verbatim of the said sitting, shows that the Government did not oppose the Bill, and agreed to its referral to the said Committee.
- (iii) The unanimously passed Report of the Standing Committee on Overseas Pakistanis and Human Resource Development, with reference to the said Bill was laid in the House on 16-5-2014. It be noted that the Minister for

Overseas Pakistanis and Human Resource Development is an Ex-Officio Member.

- (iv) The said Bill was considered and passed by the Senate on 30-6-2014. The verbatim of the said sitting shows that, the Government did not oppose the passage of the said Bill, but is on record to have supported the same.
 - (v) The said Bill being passed by the Senate was transmitted to the National Assembly on 1-7-2014.
 - (vi) A message was received by the Senate from the National Assembly on 9-6-2015, informing it that the National Assembly had not passed the said Bill within 90 days of its being laid in the said House.
- B(i) Senator Syeda Sughra Hussain Imam, as she then was, gave notice of a Bill on 24-12-2013, titled the Civil Servants (Amendment) Bill, 2013.
- (ii) The Bill was introduced and referred to the concerned Standing Committee on 13-1-2014. The verbatim of the said sitting, shows that the Government did not oppose the said Bill.
 - (iii) The unanimously passed Report of the Standing Committee on Cabinet Secretariat and Capital Administration and Development with reference to the said Bill was laid in the Senate on 4-3-2014.
 - (iv) The said Bill was considered and passed by the Senate on 10-3-2014. The verbatim of the said sitting, carries a statement of the Minister of State for Parliamentary Affairs, to the effect, that he opposed the Bill in the Standing Committee, but since it was unanimously passed by the said Committee, he does not oppose it.
 - (v) The said Bill being passed by the Senate was transmitted to the National Assembly on 11-3-2014.

- (vi) A message was received by the Senate from the National Assembly on 9-6-2015, informing it that the said Bill was not passed by the National Assembly within 90 days of its being laid in the said House.

C(i) Senators Ghous Muhammad Khan Niazi and Saeed Ghani on 11-6-2015, gave notice of Motions under sub-rule (7) of rule 126, "Rules, 2012", which Motions were passed by the Senate on 15-6-2015.

- (ii) As a consequence, the Chairman Senate, invoked rule 127, of the "Rules, 2012", and requested the President of Pakistan to convene a Session of the joint sitting of Parliament to take into consideration the aforesaid Bills as provided under clause (3) of Article 70 of the Constitution, 1973, vide letters Nos. F.24(23)/2013-Legis and F.24(18)/2013-Legis, both dated 29-6-2015.

3. The narrated facts above, clearly shows that the Government intentionally or unintentionally failed to oppose the said Bills firstly when;

- i) Under paragraph (a) of sub-rule (1) of rule 16 read with rule 28 of the "Rules, 1973", after receiving notice under rule 94 of the "Rules, 2012", the Federal Cabinet should have decided on the said Bills;
- ii) the said Bills were referred to the Standing Committee under sub-rule (5) of rule 95 of the "Rules, 2012", where the Minister Incharge, is an Ex-Officio Member;
- iii) under Rule 100 of the "Rules, 2012", the Motion for Consideration and Passage of the said Bills was moved.

Not availing the aforesaid provisions within the rules for opposing the said Bills, appears to be a conscious decision, taken after application of the mind. Further the non-invoking of the Party Whip, at the Committee stage or on the floor of the House, confirms this perception. Therefore, recourse now to rule 28 of the "Rules, 1973", which in any case has lost its efficacy, as the said Bills have far travelled the stage when it could

have been invoked. The said rule, in any case, is not applicable and is redundant, as in much as, proceedings under clause (3) of Article 70 of the Constitution, 1973, are concerned.

4. The upshot of the above discussion raises the questions,-

Firstly, is rule 28 read with paragraph (a) of sub-rule (1) of rule 16 of the "Rules, 1973", applicable or available to the Government when a Bill is referred by the Chairman or Speaker of the Senate or the National Assembly respectively under clause (3) of Article 70 of the Constitution, 1973.

Secondly, is the entry at Sr. No.45, under the head of "Parliamentary Affairs Division", in Schedule V-B of the "Rules, 1973", a entry inconsonance with clause (3) of Article 70 of the Constitution, 1973, read with the Rules of Procedure framed under Article 67 of the Constitution, 1973. If not, then what will be the procedure?

5. The first question framed in paragraph No. 4 hereinabove, is dealt with and answered in the following terms;

- (i) The Ministry of Parliamentary Affairs, dealt with Chairman Senate's, request to the President of Pakistan, under clause (3) of Article 70 of the Constitution, 1973, read with sub-rule (7) of rule 126 and rule 127, of the "Rules, 2012" under rule 28 of the "Rules, 1973".
- (ii) The reliance on rule 28 of the "Rules, 1973", by the said Ministry is misconceived, erroneous and inconsistent with the spirit and intent of clause (3) of Article 70 of the Constitution, 1973, read with sub-rule (7) of rule 126 and rule 127 of the "Rules, 2012". Rule 28 is placed in "Part-E" i.e. Legislation section, of the "Rules, 1973". Rules 27 and 28 of the "Rules, 1973", deal with Official and non-official Bills respectively. A mere reading of the two rules establishes that they come into operation, for Official Bills prior to notice being given to either House for introduction of a Bill, more particularly, rule 96, of the "Rules, 2012". For a Private

Member's Bill after notice under rule 94 of the "Rules, 2012", has been given.

- (iii) Sub-rules (2), (3) and (4) of rule 28 of the "Rules, 1973", clearly stipulate that vetting, any action, any advice or Cabinet approval as the case may be, shall be prior to notice being given under rule 96 of the "Rules, 2012", in terms of an Official Bill and after notice in terms of rule 94 of the "Rules, 2012", with respect to or in relation with non-official Bills (Private Member's Bill).
- (iv) While perusing rule 28 of the "Rules, 1973", attention is drawn to the fact that, the Federal Government while drafting sub-rule (2) of the said rule has infringed upon the internal functions of the Parliament's Secretariats, which are independent and autonomous in their finances, functions and procedures as provided under Article 87 of the Constitution, 1973. The relevant portion of sub-rule (2) of rule 28 is reproduced"

"....., advise it as to whether any legal requirements are to be complied with and whether the Bill is one which cannot be introduced under the Constitution without the consent or recommendations of the Federal Government or previous sanctions of the President."

The placement of such a provision in rule 27 of the "Rules, 1973", pertaining to and dealing with Official Bills is understandable. Sub-rule (2) of rule 28 of the "Rules, 1973", is inconsistent and in conflict with sub-rule (3) of rule 94 of the "Rules, 2012". The same is reproduced as under:-

"(3). The Chairman shall decide the question whether the Bill does or does not require the consent of the Government or previous sanction of the President."

- (v) The "Rules, 2012", draw their strength from Article 67 of the Constitution, 1973, and are reinforced by the explicit principle that proceedings of Parliament including its Secretariat, cannot be interfered with by the

Executive. This also has been recognized in rule 31 of the "Rules, 1973" which is reproduced as under;

"31. Compliance with Rules of Majlis-e-Shoora (Parliament).—All Divisions shall, in their relations with the Assembly, the Senate and Majlis-e-Shoora (Parliament) in joint sitting comply with the Rules of Procedure and Standing Orders of the Assembly, the Senate or the joint sitting, as the case may be."

The Federal Government is advised to amend the said sub-rule in the light of the discussion herein.

- (vi) The provisions of sub-rule (3) of rule 28 of the "Rules, 1973", are not applicable to the Senate of Pakistan. The relevant provisions of the said sub-rule are reproduced as under:-

"(3). The Division shall then obtain _

(a) _____

(b) the decision of the Cabinet is to which of the following motions in the Assembly is to be supported _

(i) that it be taken into consideration by the Assembly either at once or at some future date to be specified;

(ii) that it be referred to a Select Committee;

(iii) _____

(iv) _____

(c) _____." (emphasis provided).

- (a) In para (b) and sub-para (i) of para (b) of sub-rule (3) of rule 28 of the "Rules, 1973", the word used is "Assembly". "Assembly" has been defined in para (i) of sub-rule (1) of rule 2 of the "Rules, 1973", to mean, "the National Assembly", therefore, the motions for which instructions are being

sought from the Cabinet, after notice of a non-Official Bill/ Private Member's Bill, under rule 94 of the "Rules, 2012", pertains and deals only with the National Assembly. There is no mention in the rule under reference to the Senate or Parliament. Therefore, para (b) of sub-rule (3) of rule 28 of the "Rules, 1973", is not applicable to the Senate.

- (b) Sub-para (ii) of para (b) of sub-rule (3) of the said rule, mentions a Motion with reference to a non-official Bill/ Private Member's Bill, referring it to a Select Committee. Sub-rule (4) of rule 95 of the "Rules, 2012", provides that a Minister or a Member may oppose the introduction of a Bill, if the majority of Member present are in favour of the leave, the Chairman shall announce that the leave is granted. Subsequently under sub-rule (5) of rule 95 of the "Rules, 2012", the Bill shall stand referred to the Standing Committee concerned. In this context rule 98 of the "Rules, 2012", further strengthens this position. The said rules are in Chapter XII of the "Rules, 2012", which pertains to "legislation" i.e. Introduction of Bills in the Senate, whereas, the rule dealing with a Select Committee, is in Chapter XVII of the "Rules, 2012", dealing with Committees of the Senate. Rule 203 pertaining to a Select Committee on Bills, falls under the sub-heading of "other Committees". Therefore, the said provision of the "Rules, 1973", referred to above, is not applicable to the Senate at the introduction stage i.e. rule 95 of the "Rules, 2012",. The Federal Government is advised to accordingly modify or amend the said rule.

6. Now, I take up the second question in para No.4 above. The Constitution, 1973 primarily contemplates three situations when a joint sitting of Parliament may be summoned, under;

- (a) clause (1) of Article 54 of the Constitution, 1973;
- (b) clause (3) of Article 70 of the Constitution, 1973, read with sub-rule (7) of rule 126 and rule 127 of "Rules, 2012"; and,
- (c) the emergency provisions, when invoked.

- (ii)a. Sub-clause (1) of Article 54 of the Constitution, 1973, clubs together, the summoning of the Senate, the National Assembly and a joint sitting, separately or together, to transact normally "Government Business". Sub-rule (1) of Rule 15-A of the "Rules, 1973", provides a list of cases requiring orders of the President on the advise of the Prime Minister, the said cases are specified in Schedule V-B of the said Rules. In the said Schedule, under the head "Parliamentary Affairs Division", at Sr. No. 39, is a entry of summoning and prorogation (under clause (1) of Article 54 of the Constitution, 1973,) of either House or both Houses of Majlis-e-Shoora, Parliament, in joint sitting. This entry is rightly placed as such summons are issued for the purpose of transacting Government Business.
- (iii)a. For a joint session summoned by the President under clause (3) of Article 70 of the Constitution, 1973, in conflict with the Constitution and the Rules framed therein, "Rules, 1973" provides in Schedule V-B, under the head "Parliamentary Affairs Division", at Sr. No.45, a entry which provides for the Prime Minister to advise the President to summon a joint sitting under clause (3) of Article 70 of the Constitution, 1973. This entry violates the intent and spirit of clause (3) of Article 70 of the Constitution, 1973, and the Rules of Procedure for the following amongst other grounds and reasons:-
- (aa) The language of clause (3) of Article 70 of the Constitution, 1973, sets it clearly apart from clause (1) of Article 54 of the Constitution, 1973.
- (bb) Clause (1) of Article 54 of the Constitution, 1973, pertains to and deals with, the summoning of either House or both Houses in a joint sitting to transact "Government Business", therefore, the advise of the Prime Minister to the President for summoning such a Session is necessary.
- (cc) Clause (3) of Article 99 of the Constitution, 1973, is reproduced as under;

"The Federal Government shall also make rules for the allocation and transaction of its Business." (emphasis provided).

As a consequence of which, the "Rules, 1973", were framed. Their scope is limited to the allocation and transaction of business by the Federal Government.

(dd) Clause (3) of Article 70 of the Constitution, 1973, is reproduced as under;

"(3). If a Bill transmitted to a House under clause (1) is rejected or not passed within ninety days of its laying in the House or a Bill sent to a House under clause (2) with amendments is not passed by that House with such amendments, the Bill, at the request of the House in which it originated, shall be considered in a joint sitting and if passed by the votes of the majority of the members present and voting in the joint sitting it shall be presented to the President for assent." (emphasis provided).

It is clear from the language of the said clause, that it pertains to and deals with, business pending before a House, which is the property of the House and, is to be regulated by the Rules of Procedure framed under Article 67 of the Constitution, 1973, of either House. In particular, with reference to the Senate, once a Notice of a Bill has been given under rule 96, or Notice of a Bill received under rule 94 and, a Motion under rule 95 of the "Rules, 2012", is under consideration, it is "business pending before the Senate". In this process the Bill has changed hands from the "Rules, 1973" which ceases to have affect; to the hands of the Rules of Procedure of either House of Parliament.

(ee) Clause (3) of Article 70 of the Constitution, 1973, provides that if a Bill is transmitted to a House under clause (1) is rejected or not passed within 90 days of its laying in that House or a Bill sent to a House under clause (2) with amendments is not passed by that House with such amendments, then the Bill at the request of the House in which it originated, in the instant case, the Senate, it shall be considered in a joint sitting. The mechanism which gives effect to this mandatory provision, if invoked, of clause (3) of

Article 70 of the Constitution, 1973, is governed by sub-rule (7) of rule 126 and rule 127 of the "Rules, 2012".

- ff) Sub-rule (7) of rule 126 of the "Rules, 2012", provides, when a Bill transmitted to the National Assembly is rejected or not passed within ninety days of its being laid in that House, or is passed in the National Assembly with amendments, but not passed by the Senate with such amendments, any Minister, in the case of a Government Bill or, in any other case, any Member may, after giving two days notice, move that the Bill may be considered in a joint sitting. If the motion is carried, rule 127 of the "Rules, 2012", will come into play, which provides, once a Motion under sub-rule (7) of the rule 126 is carried, the Chairman shall refer the Bill to the joint sitting or, when a joint sitting is not in Session, request the President to summon a joint sitting for consideration of a Bill. These rules all so reinforce the fact that these are proceedings before the House.
- (gg) Rule 127 of the "Rules, 2012", contemplates two situations namely, the joint sitting is in Session, the Chairman, himself, without any permission or referral to any other authority refers the Bill to the joint sitting. In case a joint sitting is not in session and is required to be summoned, he will, "request" the President of Pakistan, to summon such a session for the exclusive purpose of considering the Bill. The word "request" used in clause (3) of Article 70 of the Constitution, 1973, and in rule 127 of the "Rules, 2012", means "advise" as the Chairman is asking the President to summon a joint sitting to consider "business pending before the Senate." It will not be incorrect to say that this is an internal transfer of business within Parliament, as the President is its part under Article 50 of the Constitution, 1973. Therefore, the request/advice so tendered under clause (3) of Article 70 of the Constitution, 1973, read with rule 127 of the "Rules, 2012", and its corresponding rule in the National Assembly by the Chairman or the Speaker, which advice shall be binding on the President. Therefore, the entry at Sr. No.45, under the heading "Parliamentary Affairs Division", in

Schedule V-B of the "Rules, 1973", is inconsistent with the provisions of the Constitution and the Rules framed therein, and of no legal affect.

7. This interpretation of clause (3) of Article 70 of the Constitution, 1973, and more particularly of the word "request" as used in the said clause and in rule 127 of the "Rules, 2012", is within the scheme of the Constitution, 1973. Clause (3) of Article 54 of the Constitution, 1973, provides that 1/4th of the Members of the National Assembly may requisition a Session, the said clause read with Article 61 of the Constitution, 1973, provides similarly for the Senate. For either House a Session requisitioned is to be summoned and prorogued by the Speaker or Chairman of the National Assembly or the Senate, respectively. The common thread running between clause (3) of Article 54 read with Article 61 and clause (3) of Article 70 of the Constitution, 1973, and rule 127 of the "Rules, 2012", is that when any request, issue or business is generated or is pending or is business of the House its disposal and control vests with the Chairman or the Speaker of the Senate or the National Assembly respectively.

8. The fact that, Parliament is on a pedestal different to other offices and institutions, created or functioning under the Constitution, 1973, is evident from Article 190 of the Constitution, 1973, which provides that all executive and judicial authorities shall act in aid of the Supreme Court to the exclusion of Parliament.

9. In view of the discussion above, the questions raised in paragraph (4) above, are answered as under;


Q1: Rule 28 of the "Rules, 1973", as presently drafted, is to the extent described more fully hereinabove, not applicable to the Senate of Pakistan. In case of its partial applicability to the Senate, the time span of such application is limited to a notice being issued under rule 94 and a Motion being made under rule 95 of the "Rules, 2012". Therefore, in the instant case the reliance on the said rule by the Government is misconceived and unlawful.

Q2: The entry at Sr.No.45 under the heading "Parliamentary Affairs Division", in Schedule V-B of the "Rules, 1973", is in violation of clause

(3) of Article 70 of the Constitution, 1973, read with sub-rule (7) of rule 126 and rule 127 of the “Rules, 2012”, and rule 31 of the “Rules, 1973”, therefore, it is of no legal affect being unlawful and unconstitutional.

10. The procedure to be adopted once a request/ advise under clause (3) of Article 70 of the Constitution, 1973, read with relevant Rules of Procedure of either House, has been tendered by the Chairman or the Speaker of the Senate or the National Assembly, respectively, the President shall summon a joint sitting with the sole purpose of taking into consideration the Bill or Bills so referred. While coming to a conclusion on the date of such summoning, he may or may not, seek the advise of the Ministry of Parliamentary Affairs, to the extent of the date of such summoning, only.

11. Before concluding, the Senate Secretariat is directed to provide copies of this Ruling to the Secretary, President of Pakistan, Speaker National Assembly, the Prime Minister, Minister for Law, Justice and Human Rights, Minister Incharge Cabinet Division and Minister of State for Parliamentary Affairs.



MIAN RAZA RABBANI
NI
Chairman Senate

Dictated in Chamber
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