



RULING OF THE CHAIR

Withholding information from the Parliament

This ruling stems from the following facts:

1. That on 30-06-2016, Senator Chaudhary Tanvir Khan gave notice of a Question which is as under:-

"Will the Minister for Finance, Revenue, Economic Affairs, Statistics and Privatization be pleased to state:

- (a) the names of persons/ companies who have obtained loans of Rs. 5 million or more from the National Bank of Pakistan during the last five years; and*
- (b) the number of cases in which the said loans have been repaid are being repaid and those which have been waived off?"*

2. The said question was fixed for oral reply on 6th September, 2016.

3. In the written reply the National Bank of Pakistan took the following position:-

"the names of persons/ companies who have obtained loans from the National Bank of Pakistan is private information of the borrowers and is protected under Section 33-A of the Banking Companies Ordinance, 1962 and Section 9 of Protection of Economic Reforms Act, 1992 etc., which interalia, stipulates that "no bank or financial institution shall divulge any information relating to the affairs of its customers and secrecy of bonafide banking transactions shall be strictly observed". However, aggregate loan amount of Rs. 5 million and above disbursed by NBP during last five years (i.e. July 2011 to June, 2016) is amounting to Rs. 360 billion.

Out of total amount disbursed during the said period, the loan amount of Rs. 271 billion are outstanding comprising regular loan of Rs. 216 billion

and Non Performing Loans (NPLs) of Rs. 55 billion. No loan was written-off out of the loans disbursed during last five years”.

4. In response to the supplementary questions, the learned Minister-in-charge took the position that even internationally no bank provides information regarding its customers and the provisions of Banking Companies Ordinance, 1962, and Protection of Economic Reforms Act, 1992, are in line with international practices. Furthermore, no non-performing loans have been written off; they are still pending.
5. Senators Dr. Jehan Zeb Jamaldini, Nauman Wazir Khattak and Azam Khan Swati, in supplementary questions, raised the issue that such information cannot be withheld from the Parliament.
6. Subsequent on 26-09-2016, Senator Dr. Jehan Zeb Jamaldini gave a notice of a motion under rule 60 of the Rules of Procedure and Conduct of Business in the Senate, 2012, to discuss the issue of non-revelation of the names of persons/ firms who obtained loans of Rs. 5 million and above from the National Bank of Pakistan during the last five years, arising out of the reply to starred question No. 4, placed/ taken up in the House on 6th September, 2016.
7. The said motion was fixed at order No. 8 on the Orders of the Day of 4th October, 2016, wherein, Senator Dr. Jehan Zeb Jamaldini reiterated his position that no information can be withheld from Parliament. Senators Saeed ul Hassan Mandokhail, Nauman Wazir Khattak, Muhammad Usman Khan Kakar, Saleem Mandviwala, Taj Haider and Hafiz Hamdullah also made arguments in favour of the position taken by Senator Jehanzeb Jamaldini.
8. The learned Leader of the Opposition, Senator Aitzaz Ahsan raised the following legal issues:-
(Relevant excerpts from verbatim of House proceedings dated 4th October, 2016)
 - (i) Made reference to Article 66 of the Constitution, 1973, in particular to clause (3) which provides as under:-

"66 Privileges of members, etc.

(1) Subject to the Constitution and to the rules of procedure of [Majlis-e-Shoora (Parliament)] there shall be freedom of speech in Majlis-e-Shoora (Parliament)] and no member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in [Majlis-e-Shoora (Parliament)], and no person shall be so liable in respect of the publication by or under the authority of Majlis-e-Shoora (Parliament)] of any report, paper, votes or proceedings.

(2) In other respects, the powers, immunities and privileges of [Majlis-e-Shoora, (Parliament)], and the immunities and privileges of the members of Majlis-e-Shoora (Parliament)], shall be such as may from time to time be defined by law and, until so defined, shall be such as were, immediately before the commencing day, enjoyed by the National Assembly of Pakistan and the committees thereof and its members.

(3) Provision may be made by law for the punishment, by a House, of persons who refuse to give evidence or produce documents before a committee of the House when duly required by the chairman of the committee so to do: Provided that any such law-

(a) may empower a court to punish a person who refuses to give evidence or produce documents; and

(b) shall have effect subject to such Order for safeguarding confidential matters from disclosure as may be made by the President."

(ii) While making reference to clause (3) of Article 66, Constitution, 1973, the learned Leader of the Opposition stated that no such order has been passed by the President of Pakistan exempting the National Bank of Pakistan from making disclosures to the House.

(iii) "Provision of the Banking Companies Ordinance, 1962, and Protection of Economic Reforms Act, 1992 will apply only if any authority other than a Parliamentary Committee seeks the information. For the Parliamentary Committee, the Constitution itself says that the impediment to the provision of information can be provided but any such law shall have effects subject to such orders for safeguarding confidential matters from disclosure as may be made

by the President. This is a special law to be made by the President. It would come as President's Order not as an Act of Parliament. There is not any such Presidential Order to my information that impedes or protects this information from Parliament. Protecting information from others, fair enough, there may be, even protecting that information from the court of law."

- (iv) *"We don't have a law providing for punishment but the law which provides a duty of disclosure is there in Article 66 sub-article 3. Now it has been buttressed by Article 19 A of the Constitution after the 18th Amendment which you piloted sir, and which has the right of information. I think, the National Bank of Pakistan is duty bound to make the disclosure."*

9. The Learned Minister for Law and Justice, Mr. Zahid Hamid, MNA, took the following position:-

(Relevant excerpts from verbatim of House proceedings dated 4th October, 2016)

"The whole discussion needs to be placed in perspective and related as you, yourself pointed out to this specific point raised by Dr. Jamaldini or a grievance if I may call that. Why are not the names being disclosed? Sir, distinction has to be made and this was made at the course of supplementary questions also. It was clarified by me that the question that was asked, if I may read that. You read the answer but the question was, "the names of persons, companies who have obtained loans of rupees 5 million or more from the National Bank of Pakistan during the last five years and Part B was, "the number of cases in which the said loans have been repaid or being repaid and those which have been waived off". The answer then as you, yourself have read out was that the overall amount of loans that were sanctioned during the last five years are 5 million and above dispersed. That was given and so far as the details of the loanees were concerned, reliance was placed on provisions of these two laws that there are these laws which protect secrecy and confidential information of the borrowers.

The other point which is most import, Part B that was the last line if I may read out, "no loan was written off out of the loans dispersed during the last five years". I myself answered this question few months ago. We gave full details, not just the National Bank but all banks full details of loans 50 million and

above which were written off by banks or DFIs during the period 1990 to 2015, for the last 25 years each and every loan written off, details were given.

Much stricter version of the economic reforms ordinance, was the reasons, why the bank said we have already given you information regarding written off loans. We are giving you the quantum of total loans sanctioned but so far as the details of individual loans are concerned, we are duty bound by law not to do it. However, law does provide, I will talk about the Constitutional provision just now but in so far as there are many laws like this which do provide. For example the NAB Ordinance, whenever there is any requirement, the Chairman, NAB or an officer of NAB duly authorize by him may during the course of an inquire or investigation of offence under this ordinance require any bank or financial institution notwithstanding anything contained in any other law for time being enforced to provide any information relating to any person etc. and all the details of any banking transaction.

Similarly, there are provisions in the FIA Act, there are provisions in the Control of Narcotics Substances Act etc. The law does provide for overruling even the secrecy portion. Sir, in this particular case because of these provisions the banks took this stance. However, there is absolutely no intention to hide any information and if honourable Senator so require and they want to see actually who have obtained loans. I have spoken to the banks on this, it can divulged in camera proceedings if they want to see."

10. I have heard the learned Senators, Leader of the Opposition and the Minister for law and Justice at length. The question that needs adjudication in the instant matter is:-

"Whether any person, organization, body, authority or Government can refuse to provide information to the Parliament by taking refuge under any rule, regulation or law?"

11. The legal and factual position relating to the merits of the instant question is as under:-

- (i) The sore point of the reply given to the Parliament is,-

"the names of persons/ companies who have obtained loans from the National Bank of Pakistan is private information of the borrowers and is protected under Section 33-A of the Banking Companies Ordinance, 1962

and Section 9 of Protection of Economic Reforms Act, 1992 etc., **which interalia, stipulates that** "no bank or financial institution shall divulge any information relating to the affairs of its customers and secrecy of bonafide banking transactions shall be strictly observed". (emphasis provided)

- (ii) Bare perusal of the said part of the reply gives an impression that a specific provision has been cited wherein there is an absolute restriction with regard to sharing of information of **borrowers**. (emphasis provided)
- (iii) Section 9 of the Protection of Economic Reforms Act, 1992 is reproduced as under:-

"9. Secrecy of Banking Transaction.- Secrecy of bonafide banking transactions shall be strictly observed by all banks and financial institutions, by whosoever owned, controlled or managed."

- (iv) Said Act was promulgated to protect various economic reforms undertaken by the Government in order to provide incentives to investors and to encourage inflow of foreign currency into Pakistan. Intent and purpose of the said Act can be explained in terms of the Judgment of the Apex Court cited as **PLD 1998 Lahore 90:-**

"16. The background in which the Protection of Economic Reforms Act, 1992 was promulgated having been noticed, now the various provisions of the Act be examined. According to its preamble the object in enacting the said Act was to create liberal environment for savings and investments and to provide for legal measures by the Government with a view to create confidence in the establishment and continuity of the liberal economical environment. "Economic reforms" have been defined in subsection 2(b) as Economic policies and programmes, laws and regulations announced, promulgated or implemented by the Government on and after 7th day of November, 1990 relating to privatisation of public sector, enterprises and nationalised banks, promotion of savings and investment, introduction of fiscal incentives for industrialisation and deregulation of investment, Banking, finance, exchange and payments systems holding and transfer of currencies (underlining is ours). By section 3, the Act has been given over-riding effect not only over Foreign Exchanges Regulations Act, 1947. Income

Tax Ordinance, 1979 but over any other law for the time being in force. Section 4 of the Act is important for the present purposes. It provides that all citizens of Pakistan, residing in Pakistan or outside Pakistan and all other persons shall be entitled and free to bring, hold, sell, transfer and take out foreign exchange within or out of Pakistan in any form and shall not be required to make a foreign currency declaration at any stage nor shall anyone be questioned in regard to the same. Section 5 which has been reproduced above again deals with the foreign currency. Section 6 relates to another subject and provides protection to fiscal incentives for setting up of industries. Sections 7 and 8 grant protection against compulsory acquisition and nationalisation. Section 9 provides for secrecy of bona fide banking transactions of all banks and Financial Institutions. Section 10 of the Act protects the financial obligation incurred under any instrument or contract made by or on behalf of the Government."

- (v) Section 9 of the said Act has been discussed at length by the Lahore High Court, vide its judgment cited as **1997 MLD 2086**. Relevant excerpts from the said judgment are as under:-

"Act XII of 1992 (supra) is not sub-divided in Parts and/ or Chapters. The Act contains, in all, 11 sections and while codifying section 9 of Act (supra), word "bona fide" was used in relation to banking transactions. It was in the wisdom of Legislature that they inserted the word "bona fide" in the said section while providing blanket of secrecy to the banking transactions.

14. Banking transactions, when qualified as bona fide in the section, shows the clear intent of the Legislature. Banking transactions, other than bona fide, were not provided any immunity, or secrecy."

- (vi) Section 9 of the said Act deals with the secrecy of banking **"transactions"**. The word 'transactions' has been defined in the Black's Law Dictionary, Ninth Edition at page no. 1635 in the following terms:-

"1. The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract. 2.

Something performed or carried out; a business agreement or exchange. 3. Any activity involving two or more persons."

- (vii) In view of the definition of the word "transactions", information regarding the names of persons/ companies who have obtained loans does not amount to "transaction".
- (viii) Section 33-A of the Banking Companies Ordinance, 1962 provide as under:-

"33A. Fidelity and secrecy.—(1) Subject to sub-section (4), every bank and financial institution shall, except as otherwise required by law, observe the practices and usage customary among bankers and, in particular, shall not divulge any information relating to the affairs of its customers except in circumstances in which it is, in accordance with law, practice and usage customary among bankers, necessary or appropriate for a bank to divulge such information.

(2) Every president, chairman, member of the Board, administrator, auditor, adviser, officer or other employee of any bank and financial institution shall, before entering upon his office, make a declaration of fidelity and secrecy in such form as may be prescribed.

(3) Notwithstanding anything contained in sub-section (1) and (2), every balance sheet and profit and loss account statement prepared by a bank and financial institution shall include statements prepared in such form and manner as the State Bank may specify in respect of written off loans or any other financial relief of five hundred thousand rupees or above allowed to a person as well as the provision, if any, made for bad or doubtful debts.

(4) The State Bank of Pakistan may, if satisfied that it is necessary so to do at the time of holding general elections under any law relating thereto, publish a list of persons to whom any loans, advances or credits were extended by a bank or financial institution, either in their own names or in the names of their spouses or dependents or of their business concerns (if mainly owned and managed by them) which were due and payable and had not been paid back for more than one year from the due date, or whose loans were unjustifiably written off in violation of banking practices, rules or regulations on or after such date as may be determined by the Government:

Provided that before publishing the name of any person in any such list he shall be given prior notice and, if he so requests, an opportunity of hearing."

(ix) Sub-section (1) of Section 33A, the Banking Companies Ordinance, 1962, does not provide blanket immunity/ ban regarding providing information relating to the customers rather it is a conditional clause which is clarified in the following terms:-

- a) Sub-section (1) is '*subject to sub-section (4)*' which provides that the State Bank of Pakistan may publish a list of persons to whom any loans, advances or credits were extended by a bank or financial institution, which were due and payable and had not been paid back for more than one year from the due date, or whose loans were unjustifiably written off in violation of banking practices, rules or regulations on or after such date as may be determined by the Government.
- b) The words '*except as otherwise required by law*', means that the practices and usages customary among bankers does not have the effect of law.
- c) The Financial institutions shall not divulge any information relating to the **affairs** of its customers. The terms affairs has been defined by the Oxford English Dictionary, Tenth Edition, revised, at page no. 21 in the following terms:-

"Affairs 1. An event or sequence of events of a specified kind or that has previously been referred to 2. A matter that is a particular person's concern or responsibility. (affairs) matters of public interest and importance. (affairs) business and financial dealings."

- d) In terms of the definition of "affairs", information regarding the names of persons/ companies who have obtained loans is not covered under the meaning of "affairs".
- e) Even the bar as to divulgence of any information relating to the **affairs** of the customers is not absolute as it further provides that '*except in circumstances in which it is, in accordance with law, practice and usage customary among bankers, necessary or appropriate for a bank to divulge such information.*'

(x) Legal and factual position reflected vide paras (iii) to (ix) clearly stipulates that the answer to the instant question has been drafted in a way which misleads the Parliament and its Members. Merger of two separate provisions

while hiding the conditions attached to it has given rise to a scenario which does not exist.

(xi) The Constitution of Pakistan, 1973, places the Parliament on a different pedestal from that of any organization or body; same can be fortified by clause (3) of Article 66, Constitution, 1973, which provides that the impediment to the provision of information can only be provided by a President's Order and not by an act of Parliament. Provision of the Banking Companies Ordinance, 1962, and Protection of Economic Reforms Act, 1992, cannot and do not put any fetters on the inherent powers of the Parliament to seek and examine information in the larger public interest.

(xii) It is an established Parliamentary practice, which has been further strengthened by the Rules of Procedure and Conduct of Business in the Senate, 2012, that the Members of Parliament ask questions in the larger public interest and for effective oversight of the executive. In this regard, rule 48 of the Rules of Procedure and Conduct of Business in the Senate, 2012, is reproduced herein as under:-

"a question may be asked for the purpose of obtaining information on a matter of public concern within the special cognizance of the Minister to whom it is addressed."

(xiii) Rule 50 of the Rules of Procedure and Conduct of Business in the Senate, 2012, provides conditions for admissibility of a question and in terms of rule 54 of the Rules of Procedure and Conduct of Business in the Senate, 2012, it is the Chairman Senate of Pakistan who, after examining the preconditions, decides the admissibility of a question. Rule 54 reproduced herein as under:-

"54. Chairman to decide admissibility of questions.— Within five days from the date of receipt of the notice, the Chairman shall decide on the admissibility of a question and shall disallow any question or a part thereof which, in his opinion, is in contravention of these rules, or he may, in his discretion, amend it in form."

- (xiv) Decision of the Chairman is final in this regard. Reference may also be made to M.N. Kaul S.L. Shakhder, Practice & Procedure of Parliament (Sixth Edition) at page 504, relevant excerpt is reproduced as under:-

"In effect, the Speaker has discretionary power, conferred by the rules and inherent in him, to admit or disallow a question without any reason being assigned, which no one can question. There is no right of representation to the Speaker against his decision on a question. Facts may, however, be placed before him or he may himself call for facts, but it is entirely within his discretion to give such decision as he may think fit after taking all the facts and circumstances of the case into consideration."


- (xv) The Senate Rules, 2012, provide a procedure with regard to a situation where if the executive is of the opinion that the production of a document and its disclosure would be against the public interest. Proviso to sub-rule (1) of rule 187, of the Rules of Procedure and Conduct of Business in the Senate, 2012, provides that *"the Government, if it is of the opinion that the production of a document and its disclosure would be against the public interest, prejudicial to defence, security or external relations of Pakistan, refer the case to the Chairman of the Senate who after seeing the document shall determine whether or not document shall be produced before the Committee"*.
- (xvi) It is in this view of the position reflected hereinabove that previously such like information had been provided to the Parliament. A recent example is reply to a question asked by Senator Muhammad Azam Khan Swati, which was placed on the Orders of the Day for Friday, the 22nd July, 2016, where the Hon'ble Member asked details as to the name and address of the persons who have got their debits written off during the last thirty years. The Ministry of Finance provided a detailed reply to the said question. Similarly the same Ministry in some of other questions made a request, after placing the requisite information before the Chairman Senate, that said information may not be disclosed in the public interest and the final decision was taken by the Chairman Senate.

12. In view of the constitutional, legal, Rules and factual position reflected vide para 11, the question, at para 10, is answered in the following terms:-

- i. The Government (National Bank of Pakistan and Ministry of Finance) has misled the Parliament by merging two provisions of distinct laws to create an impression which was not legally justified.
- ii. Section 9 of the Protection of Economic Reform Act, 1992, and Section 33A of the Banking Companies Ordinance, 1962, do not and cannot put any fetters on the powers of the Parliament to seek information in the public interest as the Constitution itself provides that the impediment to the provision of information can only be provided by President's Order and not by an act of Parliament.
- iii. Information as to names of borrowers neither amounts to "*banking transaction*" nor to the "*information relating to the affairs of the customers*".
- iv. Even otherwise, if the Government was of the opinion that providing names of persons who have obtained loans will be against the public interest, the only available remedy was to make recourse to the provisions of Senate Rules, 2012, for making request to the Chairman Senate in this regard, which request was not made in the instant case.

13. This is a deliberate attempt to withhold information from the Parliament which amounts to a breach of privilege of the House and its Member but keeping in view the stand taken by Minister for Law and Justice, it is directed that the National Bank of Pakistan through the Government (Ministry of Finance) shall inform the House within ten days of this Ruling regarding the names and action taken against persons/ officials of the National Bank of Pakistan and Ministry of Finance who had drafted and approved the misleading answer for placing the same before the Parliament.

14. Before parting with this Ruling, I must acknowledge the work done by Ms. Rabeea Anwar, Joint Secretary (Legislation) in its research. The Secretariat is directed to send copies of the same to the Minister for Finance, Revenue, Economic Affairs, Statistics and Privatization, the Minister for Law and Justice and the Minister for Parliamentary Affairs.



MIAN RAZA RABBANI
NI
CHAIRMAN

Dictated in the Chamber
Announced in the House on 4th November, 2016.