



RULING OF THE CHAIR

1. This ruling is to be read in extenso to the Ruling dated 5th October, 2015, which was announced in the House on the instant date.
2. Today, i.e. on 2nd November, 2015, Members of Senate belonging to MQM have formally withdrawn their resignations which were tendered by them, under protest, on 12th August, 2015.
3. There was one school of thought which had created ambiguity in the role of the Chairman Senate and Speaker National Assembly, when a resign or mass/enblock resigns are tendered under clause (1) of Article 64, Constitution, 1973. The ruling dated 5th October, 2015, laid down the guidelines and procedure to be adopted in the instance of en mass/en block resigns. The procedure provided in paragraph 18 of the said Ruling pertains to rule 18, and is a consequence of the powers that flow from rule 264 of the Rules of Procedure and Conduct of Business in the Senate, 2012, which provides that matters not specifically provided for in these Rules and all questions relating to the detailed working of these Rules shall be regulated in such manner as the Chairman may, from time to time, direct.
4. As given in the said Ruling, en mass resignations will be presumed prima facie in furtherance of a political purpose and, not for the primary purpose of relinquishing the seat of Member of the Senate. The statement of Dr. Farooq Sattar, Leader of MQM, given in the print and electronic media on 9th October, 2015, substantiates this presumption, in the instant case he stated that, “left with no other option for the redressal of grievances, the MQM legislators had to resign from the Parliament and the Sindh Assembly. Now the Government has agreed to listen to us we have decided to come back to the Assemblies”. This statement confirms that the resigns given by the MQM legislators were tendered under “protest”, in furtherance of a political agenda and the true

intention was not to vacate the seat. Furthermore, there was reasonable material and circumstances available on the record, which gave me a perception, that the resign of the Members, may not be voluntary or genuine and the true intention is not to vacate the seat. Hence it was a political question which had to be dealt with political consciousness.

5. The verification of resigns did not take place as, the said ruling provided, that the procedure for acceptance or otherwise of resigns shall be put into motion “after the completion of forty consecutive days of Senate sittings from the date of receipt of resignation in the Chairman’ office/Secretariat.” Till date, only thirteen consecutive days of Senate sittings have elapsed from the day when the MQM Senators tendered resigns.
6. Before verification or the resigns becoming effective under clause (1) of Article 64, Constitution, 1973, read with rule 18, Rules of Procedure and Conduct of Business in the Senate, 2012, the Members of Senate belonging to MQM have withdrawn their resigns today. Being custodian of the House and conscious of the fact that I am bound by my Oath of office, under Article 61, Constitution, 1973, “*to perform my functions honestly, to the best of my ability, faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan, the law and as Chairman of the Senate of Pakistan in accordance with the Rules of the Senate*”, I hereby pronounce that the resigns stand withdrawn.
7. Let it be reiterated for the sake of abundant clarity, that they never ceased to be Members of the Senate of Pakistan. The questions that arise from their absence from the House are:-
 - (i) What will be the treatment of their absence from the sittings of the House?
 - (ii) What will be the status of their legislative and non-legislative business, which was taken up in the House during their absence?

In respect of Question No. (i), it is advised that the Members, if they so desire, may move leave applications seeking condonation of their absence from the House during the Senate sittings.

In respect of Question No. (ii), it is advised that fresh notices may be given in respect of business which stood lapsed in terms of the Rules of Procedure and Conduct of Business in the Senate, 2012, whereas, the pending business will continue to pend.

8. In terms of clause (1) of Article 64 read with Article 69 of the Constitution, 1973, and rules 18 and 264 of the Rules of Procedure and Conduct of Business in the Senate, 2012, this ruling regarding withdrawal of resigns by MQM Senators is final.

9. This is business of, or before the House, the question of resign is controlled by rule 18, which is couched in the “Rules of Procedure and Conduct of Business in the Senate, 2012,” (emphasis provided). Therefore, from the placement of the said rule alone, it is business of the House/ Senate.
10. Without prejudice to the above, if it be termed as a procedure undertaken by the Chairman’s office in conjunction with the Senate Secretariat, it becomes business ancillary to, or pertaining with the House, which is regulated by rule 18 of the “Rules of Procedure and Conduct of Business in the Senate, 2012.” (emphasis provided).
11. In either of the two eventualities, in my Ruling dated 5th October, 2015, it has been held as under;

“The acceptance or otherwise of a resign under clause (1) of Article 64, Constitution, 1973, is the sole prerogative of the Chairman Senate or Speaker National Assembly, as the case may be, being business of the House or a matter ancillary thereto.”.

12. This finding flows, from the international concept of sovereignty of Parliament. In particular to the Pakistani concept, the Senate of Pakistan is a component of Parliament under Article 50, created individually under Article 59, Constitution, 1973. The Rules of Procedure and Conduct of Business in the Senate draw their legitimacy from Article 67, Constitution, 1973. Further the Secretariat of the Senate is established under Article 87, Constitution, 1973, and its autonomous and independent status draws strength from sub-clause (b) of Article 81, Constitution, 1973.
13. This finding also draws from Article 69, Constitution, 1973, which is for the sake of convenience reproduced as under:

“69.(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

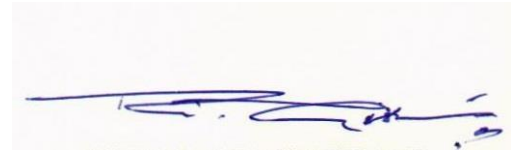
subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

(3) *In this Article [Majlis-e-Shoora(Parliament)] has the same meaning as in Article 66.” (emphasis provided).”*

14. Article 69, Constitution, 1973, was inserted by the authors of the Constitution, 1973, to ensure the concept of sovereignty of Parliament. This does not mean that the Chairman or the Speaker, of the Senate or the National Assembly, as the case may be, has unbridled powers and his decisions cannot be questioned by a Member or Members so affected. Firstly, a review of the order or decision can be undertaken on the generally accepted principle, “that an authority passing an order can review the same.” As is provided under Article 188, Constitution, 1973, for the Supreme Court. Secondly, Rule 264 of the Rules of Procedure and Conduct of Business in the Senate, 2012, provides for residuary powers of the Chairman, where he can adopt any mode or procedure which has explicitly not been provided for under the said Rules. Thirdly, there are various parliamentary instruments provided under the Rules, whereby, subsequently the House itself can undo such a decision, for example, sub-rule (2) of rule 246 of Rules of Procedure and Conduct of Business in the Senate, 2012.
15. The philosophy behind Article 69, Constitution, 1973, is further fortified by Article 190, Constitution, 1973, whereby Parliament has been excluded.
16. I recall the Judgment of the Supreme Court in the case of Muhammad Azhar Siddiqui vs. Federation of Pakistan (PLD 2012 SC 774), although I don't agree with the findings therein, yet the instant case is distinguishable from the said citation, as it dealt with Article 63(2), Constitution, 1973, and the case law relied therein was also related to the said Article only. For Institutional dialogue and harmony, which is essential for good governance it is essential that the constitutional role of each Institution under the Constitution be respected by the other.
17. Therefore, to conclusively decide the matter, once for and all, it would be fit, proper and expedient, if the Government, in consultation with all political parties represented in the Parliament, amend the Constitution, 1973, to provide the procedure as outlined in my ruling dated 5th October, 2015, which would be in line with international practices.

18. Before concluding, I am conscious of the duty cast by the Constitution and with the concept of trichotomy of power, that interpretation of the Constitution is a prerogative of the Judiciary. Through this Ruling, I have taken into consideration those provisions of the Constitution read with the Rules of Procedure, which pertains to, or deal with business, before or pending in the House or matters ancillary thereto, or connected with the functioning of the Senate Secretariat.

19. The Senate Secretariat is directed that the copy of this Ruling may be sent to the President of Pakistan, the Prime Minister of Pakistan, the Speaker National Assembly, the Minister for Law and Justice, the Minister of State for Parliamentary Affairs, the Election Commission of Pakistan and the Registrars of the Supreme Court of Pakistan and the High Courts.



MIAN RAZA RABBANI
NI
Chairman Senate

Dictated in Chamber
Announced in the House on 2nd November, 2015.
121th Session