

Federation of Pakistan v. The Supreme Judicial Council

PLD 2024 SC 698

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On October 12, 2018, the Supreme Judicial Council ('SJC') received a slew of complaints of misconduct against the then Chief Justice of Pakistan ('CJP'), Mian Saqib Nisar, for violating the Judges Code of Conduct. These complaints remained in limbo for sixteen months until the SJC took them up on February 14, 2019, a month after the retirement of Justice Nisar. Resultantly, the SJC dismissed the complaints for being infructuous. However, the complainants filed a petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ('Constitution') to seek an order to refer the complaints to the SJC under Article 209(6) of the Constitution. The petition was dismissed by a two-member bench of the Supreme Court of Pakistan ('Court') in the *Afiya Shehrbano* case on June 27, 2023, with a declaration that 'Article 209 of the Constitution does not apply to a person who has retired or resigned from the office of this Court or a High Court.'¹

The present judgment is an intra-court appeal filed in the Court on January 23, 2024—against the decision of a two-member bench of the Court—under Section 5 of the Supreme Court (Practice and Procedure) Act, 2023, read with Article 184(3) of the Constitution. The issue before the Court was 'whether pending proceedings before the Supreme Judicial Council stand abated on account of retirement and resignation of a Judge.'

While authoring the majority note, Justice Amin-ud-Din Khan declared that the SJC is an independent body with absolute prerogative to proceed with the matter in accordance with the Constitution and the law. Therefore, misconduct proceedings, once initiated against a judge, do not stand abated or become infructuous on account of the resignation or superannuation of the judge. On this, Justice Jamal Khan Mandokhail meticulously analysed Article 209 of the Constitution in his concurring note. He opined that in Article 209(5), the phrase 'the president shall direct the Council' suggests a mandatory provision following which the SJC is left with

¹ *Afiya Shehrbano Zia & others v. The Supreme Judicial Council & others* PLD 2023 SC 510.

no option but to initiate the inquiry, or it may initiate such investigations on its own motion on the information of misconduct ‘from any source’.² Once an inquiry is initiated, the SJC must take the proceedings to their logical end and report back to the President under Article 209(6) of the Constitution, based on which the President may or may not remove the judge. Justice Mandokhail concludes that the termination of complaints, pending the proceedings, would frustrate the ideal of judicial accountability by allowing judges to escape the penal consequences of misconduct—suspension of post-retirement benefits—and would contribute to the public’s perception that ‘judges are above the law’. Here, Justice Mandokhail also pours adequate scorn on Justice Nisar, recalling that ‘he [Justice Nisar] sat upon the same [complaints against him]...and held the Council hostage by not convening the meeting.’³

In contrast, the dissent by Justice Syed Hassan Azhar Rizvi presents a harmonious reading of the Constitution to suggest that unlike Articles 182 and 202—which refer to a ‘person who has held the office of a Judge’—Article 209(5) applies to sitting judges. Therefore, he affirms the impugned judgement passed by the two-member bench.⁴

This judgment proffers a progressive interpretation of law by paving new avenues for judicial accountability; however, it does not provide any relief to the present petitioners, as it restricts the application of Article 209 of the Constitution to only those instances where the proceedings were formally initiated by the SJC before the concerned judge retired or resigned. Consequently, Justice Nisar cannot be held accountable in pursuance of this judgment since the proceedings against him were never initiated during his tenure as a judge.

However, the judgment did not entirely go ineffectual, as in less than a month of having been pronounced, it found its first application when Justice Mazahar Ali Akbar Naqvi, who had already resigned as a judge of the Court, was declared ‘guilty of misconduct’ on March 7, 2024, and consequently stripped of his post-retirement benefits.⁵ Justice Naqvi had been confronting SJC’s proceedings since October 2023 for more than a dozen allegations related to his judicial conduct.⁶ His resignation on January 10, 2024, came at a time when the judgment

² Constitution of Pakistan 1973, art 209(5).

³ *Federation of Pakistan v. The Supreme Judicial Council* PLD 2024 SC 698.

⁴ *Federation of Pakistan v. The Supreme Judicial Council* 2024 SCP 106 [19] (Hassan Azhar Rizvi J., dissenting).

⁵ Hasnaat Malik, ‘Ex-SC Judge Found Guilty of Misconduct’ (*The Express Tribune*, 7 March 2024) <<https://tribune.com.pk/story/2458675/ex-sc-judge-found-guilty-of-misconduct>> accessed December 22, 2024.

⁶ Supreme Judicial Council, ‘Justice Mazahar Ali Akbar Naqvi, Judge, Supreme Court of Pakistan’ (opinion under Article 209(6), March 7, 2024).

in the *Afiya Shehrbano* case (declaring the inapplicability of Article 209 of the Constitution to retired judges) was still in place. Seeking an opportunity, Justice Naqvi abruptly resigned to evade the proceedings and hence retain his post-retirement benefits. But this act did not spare him his conviction, as the SJC decided to continue its proceedings against the former judge in its meeting on January 12, 2024.⁷ The next day, the federal government also decided to challenge the *Afiya Shehrbano* judgment through the present intra-court appeals ('ICA petitions').⁸ Surprisingly, the ICA petitions came when the SJC required a re-interpretation of Article 209 of the Constitution to safely continue its proceedings against Justice Naqvi. However, the petitions were already time-barred by 180 days, but the delay was condoned on account of technical lapses in the pronouncement of the impugned judgment. This led to the present verdict, which was announced on February 21, 2024, and subsequently, on March 7, 2024, the SJC, headed by the then Chief Justice, Qazi Faez Isa, declared Justice Naqvi guilty of misconduct.

Justice Naqvi was not alone in suffering the implications of the present judgment. Just two days after he resigned, the then senior puisne judge of the Court, Justice Ijaz ul Ahsan, also stepped down. There is a debate in the legal community that Justice Ahsan resigned to avoid potential misconduct proceedings for having extended an undue relief to his former client, BNP (Private) Limited, in a case of a disputed property, the One Constitution building.⁹ However, initiation of any proceedings against Justice Ahsan is now unlikely even after this judgment, as he managed to exit the Court before such proceedings could be initiated.

Despite the upsides of accountability of superior judges, post-retirement proceedings could construe an element of victimisation of judges who no longer hold office or have resigned to avoid further stigmatisation. The untimely move of pursuing lapsed appeals in the present case bears ample testimony to this assertion. To redress this dilemma, the SJC's procedure must be regulated to ensure timely cognisance of complaints before a judge resigns or retires. To this effect, Justice Mandokhail also suggests an amendment to the SJC's Procedure of

⁷ Nasir Iqbal, 'Justice Naqvi Still in Supreme Judicial Council Dock despite Resignation' *Dawn* (Islamabad, 12 January 2024) <<https://www.dawn.com/news/1805153>> accessed 28 September 2025.

⁸ Nasir Iqbal, 'Govt to Appeal SC Ruling Hindering Supreme Judicial Council Action against Former Judges' *Dawn* (Islamabad, 13 January 2024) <<https://www.dawn.com/news/1805440>> accessed 28 September 2025.

⁹ Nadir Guramani, 'President Alvi Accepts Resignation of Justice Ijazul Ahsan' *Dawn* (Islamabad, 12 January 2024) <<https://www.dawn.com/news/1805221>> accessed 28 September 2025.

Inquiry, 2005, to introduce a ‘regular and vigilant mechanism for convening a meeting of the Council.’¹⁰

While the SJC’s Procedure of Inquiry, 2005 requires judicial reconsideration, the legislature has introduced some significant changes in Article 209 of the Constitution through the Constitution (Twenty-sixth Amendment) Act, 2024 (‘26th Constitutional Amendment’) to expedite the SJC’s proceedings. Article 209(6) of the Constitution now requires the SJC to complete the inquiry ‘without unnecessary delay’ and report the findings to the President ‘within six months’. However, these changes may not come to fruition on their own unless the judiciary streamlines the SJC’s procedure to avoid the politicisation of such matters in the first place.

¹⁰ Federation of Pakistan (n 3) [15].