

Speaker



National Assembly of the Islamic Republic of Pakistan

RAJA PERVEZ ASHRAF

Nishan-e-Imtiaz

No.F.24(4)/2023-Legis.

Islamabad, the 26th April, 2023

**Subject: ENCROACHMENT UPON THE NATIONAL ASSEMBLY'S
POWER TO APPROVE EXPENDITURE FROM FEDERAL
CONSOLIDATED FUND**

Dear Sir,

As Speaker of the National Assembly of Pakistan (National Assembly) and custodian of the House, I am writing to you to convey profound concern and unease of the elected representatives of the people of Pakistan regarding some recent decisions of the Supreme Court and comments made by some Hon'ble Judges, as reported in media. The National Assembly strongly feels that these recent decisions amount to encroachment upon two core constitutional functions of the National Assembly i.e. (i) law making and (ii) power of the purse.

For present purposes, I draw your attention to Article 73 of the Constitution of the Islamic Republic of Pakistan (Constitution), which vests powers related to Money Bill exclusively in the National Assembly. Articles 79 to 85 confer power and authority to approve expenditure from the Federal Consolidated Fund on the elected members of the National Assembly. Keeping in view these unambiguous constitutional provisions and division of powers and functions, I write to convey the profound concern and deep unease of the National Assembly with the orders passed by a 3-member Bench of the Supreme Court, on 14-04-2023 and 19-04-2023, directing the

State Bank of Pakistan and Finance Division, Government of Pakistan to allocate/ release Rs. 21 billion to the Election Commission of Pakistan. These orders have been passed notwithstanding that such release has expressly been forbidden by the National Assembly. While doing so, with great regret, the 3-member Bench of the Supreme Court has ignored the following:

- (i) Resolution of the National Assembly dated 06-04-2023 resolving that the decision, in SMC No. 1/2023 and CPs No. 1 and 2 of 2023 passed by a majority of 4-3, had dismissed the SMC and CPs. Thus, CP No. 05/2023 was not maintainable and as such, the decision dated 04-04-2023 has no force of law or has any binding effect;
- (ii) On 10-04-2023, the National Assembly refused to pass the Charged Sums for General Elections (Provincial Assemblies of the Punjab and the Khyber Pakhtunkhwa) Bill, 2023, whereunder a charge was sought to be created on the Federal Consolidated Fund for Rs. 21 billion, under Article 81(e) of the Constitution;
- (iii) On 17-04-2023, the Standing Committee on Finance and Revenue of the National Assembly, directed the Finance Division to seek prior approval of the National Assembly, in order to avoid constitutional violation for this unauthorized expenditure, because the National Assembly would have rejected *ex-post facto* approval for Rs. 21 billion demand for supplementary grant as *other expenditure*, keeping in view the foregoing position of the National Assembly.

It is sadly noted that the 3-member Bench's orders have completely disregarded the constitutional process and the prerogative of the National Assembly with respect to financial matters. The 3-member Bench of the Supreme Court appears to be in a hurry and has given unusual directions to the Federal Government to authorize the expenditure of Rs. 21 billion from the Federal Consolidated Fund and then present it as *fait accompli* to the National Assembly. The *ex-post facto* rejection of this amount by the National Assembly, which will most certainly happen, would make this authorization, albeit on court orders, unconstitutional and will surely lead to untoward consequences for the Federal Government. The National Assembly notes with great concern that despite knowing the consequences and effects of such prior authorization, which will

be rejected by the National Assembly when presented for *ex-post facto* approval, the 3-member Bench of the Supreme Court has threatened the Federal Government of 'serious consequences' for not authorizing the expenditure of Rs. 21 billion. This, the National Assembly notes with great dismay, is an attempt to undermine the National Assembly and amounts to breakdown of the constitutional order. The National Assembly is quite clear that such direction is an impermissible intrusion into the exclusive jurisdiction and authority of the National Assembly, and a breach of its privilege.

The constitutional courts have the power to interpret the Constitution, however, such power does not include rewriting the Constitution or undermining the sovereignty of the Parliament. It is not the prerogative of the 3-member Bench of the Supreme Court to give directions for release of funds while ignoring the constitutional provisions, which the Hon'ble Judges have taken oath to preserve, protect and defend. The National Assembly firmly believes that the power of the purse belongs solely to the National Assembly, comprising of the directly elected representatives of the people of Pakistan. The National Assembly shall defend this right and prerogative granted to it by the people and the Constitution. Any attempt to circumvent and sidestep the constitutional mechanism and due process shall be repelled by the National Assembly.

Finally, as the Speaker of the National Assembly and the custodian of the House, I invite your collective attention to the following:

- (a) The National Assembly believes that since SMC No. 1/2023 and CPs No. 1 and 2 of 2023 were dismissed by a majority of 4-3, therefore, the so-called '3-2' decision has no legal force. As such, the orders dated 04-04-2023, 14-04-2023 and 19-04-2023 passed in CP No. 05/2023 and various CMAs have no legal force. Therefore, they neither enunciate a principle of law nor are to be implemented in terms of Articles 189 and 190 of the Constitution;
- (b) Notwithstanding the foregoing, the rejection of Rs. 21 billion, either as a charged sum or as other expenditure through supplementary grant, by the National Assembly does not constitute loss of confidence of the National Assembly in the Federal Government or the Prime Minister. The rejection of Rs. 21 billion is based on the understanding of the National Assembly that

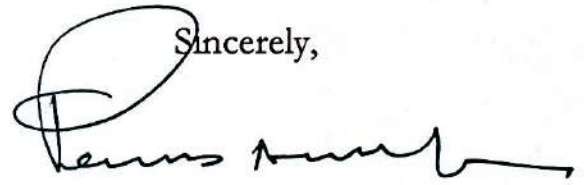
the orders of the 3-member Bench dated 04-04-2023, 14-04-2023 and 19-04-2023 are in violation of a 4-3 majority decision in SMC No. 1/2023 and CPs No. 1 and 2 of 2023.

We have always believed in the principle of separation of powers, and the Parliament has always respected the independence of the Judiciary. However, it is important to remember that each Branch has its own domain and should not encroach upon the powers of the other. I am also to convey to you the sense of the House that an unnecessary confrontation, deeply damaging to the national interest, is being created by the repeated orders to release funds to the Election Commission of Pakistan, disregarding the express will of the National Assembly. The National Assembly will approve the expenditure for the general elections to all the assemblies (National and four Provincial) in the annual budget (statement) for the next financial year, presented by the Federal Government, in due course.

It has been 50 years since the adoption of the Constitution and during this time, we have witnessed numerous encroachments upon the powers of the Parliament by the dictators. The higher Judiciary has, and sadly so, mostly ratified the undemocratic interventions. However, the people of Pakistan have always fought back, struggled for the restoration of democracy, with their blood and sweat and have always prevailed. They also strived for the establishment of an independent Judiciary. However, unfortunately, the Judiciary mostly trained its gun towards the same politicians who defended it during difficult times. Forgetting that it is the politicians and parliamentarians of the All-India Muslim League who struggled and won independence. The Objectives Resolution unambiguously declares the supremacy of the Parliament, in accordance with the vision of the Quaid e-Azam. By virtue of Article 2A, the Objectives Resolution is now a substantive part of the Constitution, which, *inter alia*, states "wherein the State shall exercise its power and authority through the chosen representatives of the people". Therefore, neither the Executive nor the Judiciary can encroach upon the powers of the National Assembly. Directing the Executive to authorize expenditure from the Federal Consolidated Fund and seek *ex-post facto* approval from the National Assembly, in the circumstances where the National Assembly has repeatedly rejected this demand, militates against the trichotomy principle embedded in our Constitution.

The Supreme Court must, as far as possible, avoid getting involved in political thicket. It is best to leave resolution of political matters by the Parliament and the political parties. I, on behalf of the National Assembly of Pakistan, urge the Hon'ble Chief Justice and Judges of the Supreme Court, individually and collectively, to exercise restraint and respect the legislative domain of the Parliament. We must work together to uphold the Constitution, protect the democratic values and work within our respective constitutional domains to ensure that confrontation between the organs of the State is avoided and the constitutional order is maintained.

Thank you for your attention to this matter.

Sincerely,

(RAJA PERVAIZ ASHRAF)
Speaker

Honorable Chief Justice Mr. Justice Umar Ata Bandial,
Supreme Court Building, Constitution Avenue, Islamabad.

CC:

1. Learned Attorney-General for Pakistan, Office of the Attorney-General for Pakistan, Supreme Court Building, Constitution Avenue, Islamabad
2. Registrar, Supreme Court of Pakistan, Supreme Court Building, Constitution Avenue, Islamabad.