

# IN THE HIGH COURT OF SINDH, AT KARACHI

## PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI**  
**CHIEF JUSTICE**  
**MR. JUSTICE ABDUL MOBEEN LAKHO**

## C.P. No. D-1636 of 2024

Petitioner Advocate/Petitioner Ali Ahmad Turabi in person  
Date of hearing 02.04.2024.  
Date of Order 02.04.2024.

## ORDER

**Abdul Mobeen Lakho, J.** The Petitioner has invoked the constitutional jurisdiction of this Court by filing captioned petition with the following prayers:-

- “1. The amendment sub-section C, section 2 of the decoration 1975 made in the year of 1997 published through official b gazette of Pakistan on 24th May 1997 may be declared as ultra vires to the constitution and may accordingly be struck down.
2. That the respondent No. 1 may be directed to draft proper rule/criteria for conferment of the these awards encapsulating the true meaning of the provision of the article 259 and working with in the four corners of the provision without the ability of mold it to ones whims and wishes.
3. That the respondents may be directed to place on record the list of the honorees and the nominating criteria for them since the advent of the amendment of 1997 for perusal and also for proper direction of this Court.
4. That respondents may be permanently restrained from conferring of any awards in violation of the provision of article 259 of the constitution Of Pakistan 1973.
5. That the respondents may be directed to recall any awards conferred in violation of the provision of article 259 of the constitution Of Pakistan 1973 since the advent of the amendment of 1997.”

2. Petitioner appearing in person argued that Respondents are obliged to confer awards, title honors and decoration to the citizen of Pakistan in accordance with the provisions of Article 259 of the Constitution and the Decoration Act, 1975. He further argued that till 1997 no addition or deletion had been made in the list as provided in the Article 259 of the Constitution, however, in the year 1997 through an amendment Sub-section (c) was added in Section 2 of the Decoration Act to define the word 'gallantry' included other fields and services, which were not mentioned in the Article 259. He further argued that the aforesaid amendment through an ordinary legislation had virtually added and amended the provisions of Article 259 of the Constitution, which is ultra vires to the Constitution as the original meaning of 'gallantry' has been greatly affected, which has given birth to unconventional means of rewarding individuals with title, who had no attributions to gallantry, whereas, these awards should only restricted to army personnel. He, therefore, prayed that the said amendment is liable to be struck down.

3. Heard counsel appearing in person and perused the record carefully with his assistance.

4. It is noted that the whole controversy of this petition revolves towards following two queries:

(1) Whether the amendment to Section 2 (c) in the Decoration Act, 1975 vide Amendment Act 1997 is ultra vires of the Constitution?

(2) Whether a Constitutional Petition under Article 199 of the Constitution could be maintained impugning the acts of Federal Government such as conferment awards/medals upon some nominated persons, pursuant to amendment in Section 2(c) of the Decoration Act 1975?

5. The first question here is whether Section 2(c) of the Decoration Act, 1975 (**"the Act"**) incorporated vide an Amendment Act 1997 (**"the Amendment Act"**) is constitutionally valid and not ultra vires. This section deals with the definition of the word "Gallantry". For proper analysis, let's go through the provision of Article 259 of the Constitution

of 1973 (“the Constitution”). This Article deals with Awards. For appropriate guidance, the same is reproduced as under;

“Awards 259. (1) No citizen shall accept any title, honour or decoration from any foreign State except with the approval of the Federal Government.

(2) No title, honour or decoration shall be conferred by the Federal Government or any Provincial Government on any citizen, but the President may award decorations in recognition of gallantry meritorious service in the Armed Forces academic distinction or distinction in the field of sports or nursing, as provided by Federal law.

(3) All titles, honours and decorations awarded to citizens by any authority in Pakistan before the commencing day other-wise than in recognition of gallantry meritorious service in the Armed Forces or academic distinction shall stand annulled.”

6. Upon careful study of this Article it comes up that there are four points on which a person can be conferred upon Award/Medal. These points are (1). Gallantry, (2). Meritorious Service in the field of Armed Forces, (3). Academic Distinction, (4). Distinction in sports or nursing. Each point has its own meaning and is to be read separately. The preamble of the Act provides as under:-

“An Act to provide for the conferment by the President of decorations in recognition of gallantry, meritorious service in the Armed Forces, academic distinction or distinction in the field of sports or nursing.”

Whereas, the Section 2 (c) of the Decoration 1975 has defined the term gallantry with a broad definition which reads as under:-

“(c) “gallantry” includes an act of bravery, heroism, courage and rendering of dedicated services with selfless devotion in human rights and public service;”.

The definition of the word ‘gallantry’ is in consonance with definitions provided in renowned dictionaries of the world are as under:-

<b>Oxford Dictionary</b>	Bravery, courageous behavior, esp. in battle; heroic or noble conduct
<b>Cambridge Dictionary</b>	The quality of being brave when something is difficult or dangerous
<b>Meriam Webster’s</b>	01. The act of marked courtesy 02. The spirited and conspicuous bravery

<b>Dictionary</b>	
<b>Collins Dictionary</b>	01. Gallantry is bravery shown by someone who is in danger 02. Gallantry is kind, polite, and considerate behavior towards other people, especially women
<b>Chatgpt</b>	"Gallantry" refers to acts of bravery, courage, heroism, or valor, especially in the face of danger or adversity. It often involves demonstrating exceptional courage or noble conduct, particularly in situations that require courage and selflessness.

7. The reproduced definitions are very much in consonance with the definition given in Section 2 (c) of the Act. Therefore, ex-facie no colourable exercise or *malafide* of legislature appears to exist. The Honourable Supreme Court of Pakistan in the case of ***Lahore Development Authority.....v.....Ms.Imrana Tiwana, reported in (2015 SCMR 1739)*** has laid down the principle to strike off any law/legislation. The relevant part of the judgment is reproduced as under:-

“64. The power to strike down or declare a legislative enactment void, however, has to be exercised with a great deal of care and caution. The Courts are one of the three coordinate institutions of the State and can only perform this solemn obligation in the exercise of their duty to uphold the Constitution. This power is exercised not because the judiciary is an institution superior to the legislature or the executive but because it is bound by its oath to uphold, preserve and protect the Constitution. It must enforce the Constitution as the Supreme Law but this duty must be performed with due care and caution and only when there is no other alternative.

65. Cooley in his "Treatise on Constitutional Limitations", Pages 159 to 186, H.M. Seervai in "Constitutional Law of India", Volume I, Pages 260 to 262, the late Mr. A.K. Brohi in "Fundamental Law of Pakistan", Pages 562 to 592, Mr. Justice Fazal Karim in "Judicial Review of Public Actions" Volume I, Pages 488 to 492 state the rules which must be applied in discharging this solemn duty to declare laws unconstitutional. These can be summarized as follows:--

**I. There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two;**

**II. Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;**

**III. A statute must never be declared unconstitutional unless its invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;**

**IV. If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;**

**V. The Court will not decide a larger constitutional question than is necessary for the determination of the case;**

**VI. The Court will not declare a statute unconstitutional on the ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution;**

**VII. The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;**

**VIII. The Court will not strike down statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution;**

**IX. Mala fides will not be attributed to the Legislature.”**

8. Further, in the case of *M/s.Sui Southern Gas Company Ltd.....v.....Federation of Pakistan & others, reported in 2018 SCMR 802*, the Honourable Supreme Court of Pakistan has observed as under;

“13. It is well established by this Court, while considering the vires of a legislative enactment under its powers of judicial review, can consider not only the substance of the law but also the competence of the legislature. Further, though it is an accepted principle that no mala fide can be attributed to the legislature, however, the bona fides of the legislature as also the purpose and object of a statute may also be considered in the determination of the vires of a statute. The vires of a statute can also be determined on the ground that the legislation is colourable. In the instant case the only issue involved is the legislative competence of the Parliament vis- -vis the legislative authority of the Provincial legislature. In this regard it is to be noted that there is always a presumption in favour of the constitutionality of a legislative enactment unless ex facie it appears to be violative of any of the Constitutional provisions and in a case where two opinions with regard to the constitutionality of an enactment are possible, the one in favour of the validity of the enactment is to be adopted. Meaning thereby that when a law is enacted by the Parliament, the presumption lies that Parliament has competently enacted it (law), and if the vires of the same (law) are challenged, the burden always lies upon the person making such challenge to show that the same (law) is violative of any of the fundamental rights or the provisions of the Constitution. It is also a cardinal principle of interpretation that law should be interpreted in such a manner that it should be saved rather than destroyed. The Courts should lean in favour of upholding the constitutionality of a legislation and it is thus incumbent upon the

Courts to be extremely reluctant to strike down laws as unconstitutional. This power should be exercised only when absolutely necessary for injudicious exercise of this power might well result in grave and serious consequences...”

9. On the touchstone of the above seminal Superior Courts’ judgments it is crystal clear that the petitioner has failed to make its case for declaring the amendment of Section 2(c) in Decoration Act, 1975, as unconstitutional and ultra vires. Moreover, it is also a settled law that in order to invoke the constitutional jurisdiction under Article 199 of the Constitution the petitioner should directly be an aggrieved person or the act(s) of the respondents should have directly prejudiced the rights of the petitioner. In the case in hand, the same does not appear to exist. It is quite relevant to discuss a case law of Honourable Lahore High Court dealing with a matter of similar nature in the case reported as *Khushdil Khan Malik vs Federation of Pakistan and others (PLD 2024 Lahore 86)*. The petitioner argued that the act of the authorities in not considering his nomination for the award was illegal and arbitrary. He contended that the principles of transparency and fair play were ignored in the process, and he questioned the competence of the Committee to confer the award, asserting that such power solely rested with the President as per Article 259 of the Constitution. However, the respondents argued that petitioner had got no locus standi to file the constitutional petition. The court, after hearing arguments from both sides and examining the relevant laws, including Article 259 of the Constitution and the Decorations Act, 1975, concluded that the mere nomination of the petitioner did not create a legal or vested right for him to receive the award. The court cited previous judgments emphasizing that nomination alone does not guarantee the conferment of an award and that the High Courts' power under Article 199 is for the enforcement of fundamental rights, not for creating new rights. Consequently, the court dismissed the petition, stating that the petitioner was not an aggrieved party, and no legal or fundamental right had been violated by the authorities.

10. In the instant matter, petitioner is not an aggrieved person. No action of Government was either proposed for him or against him. None of his legal right, whatsoever, has been violated. The amendment to Section 2(c) of the Decoration Act, 1975, appears constitutionally valid. The broadened definition of "gallantry" aligns with constitutional provisions and established legal principles, supported by definitions from renowned dictionaries. Judicial precedents emphasize the presumption of constitutionality, the burden of proof on petitioners, and the judiciary's role in enforcing existing rights rather than creating new ones. Additionally, the petitioner lacks *locus standi* and hasn't demonstrated a violation of legal rights. Therefore, the petition challenging the constitutionality of the amendment is not found maintainable.

11. In view of the above facts and observations made by the Honorable Supreme Court as well as High Court in various cases, instant petition is bereft of any merit stands dismissed in *limine*. Above are the reasons of our short order dated 02.04.2024.

J U D G E

CHIEF JUSTICE