

# IN THE HIGH COURT OF SINDH AT KARACHI

CP D 473 of 2025	:	Sharjeel Inam Memon vs. NAB & Another
CP D 482 of 2025	:	Syed Qaim Ali Shah vs. NAB & Another
CP D 501 of 2025	:	Muhammad Suhail vs. NAB & Another
CP D 502 of 2025	:	Agha Maqsood Abbas vs. NAB & Another
CP D 503 of 2025	:	Muhammad Jawed Hanif Khan vs. NAB & Another
CP D 504 of 2025	:	Kazi Jan Mohammad vs. NAB & Another
CP D 506 of 2025	:	Manzoor Qadir vs. NAB & Another
CP D 508 of 2025	:	Muhammad Siddiq Majid & Others. vs. Chairman NAB & Others
CP D 538 of 2025	:	Ziauddin Sabir & Others vs. NAB & Another

Shaukat Hayat, Amna Magsi, Faizan Hussain Memon, M. Saleem Khaskheli, Raj Ali Wahid Kunwar, Ahmed Masood alongwith Altaf Khuwaja, Paras Ali Lodhi, Iftikhar Shah and Mamoon A.K. Sherwani; Advocates.

Date of hearing : 27.02.2025

Date of announcement : 10.03.2025

## JUDGMENT

**Agha Faisal, J.** The judgment seeks to reconcile the dichotomy of jurisdiction between the Constitutional and the Regular benches of the High Court; post incorporation of Article 202A in the Constitution vide the 26<sup>th</sup> amendment. Members<sup>1</sup> of a Division bench have authored divergent views in such regard<sup>2</sup>, hence, this pronouncement of the Referee Judge<sup>3</sup>.

### *Pertinent facts*

1. Reference 01 of 2025 has been preferred before the Accountability Courts at Karachi, pertaining to matters related to *Bahria Town*. The petitioners are accused in the said reference and have filed the respective petitions aggrieved of the following order passed therein on 01.02.2025:

*“Perusal of Reference and submission note of Registrar of this Court show that prima facie a cognizable case is made out against accused persons. The Reference is, therefore, admitted, registered and numbered as "Reference No.01/2025" subject to all legal exceptions/objections, if any. Issue summons under Section 204 as per relevant law accordingly.*

*To come up on 25.02.2025 for further proceedings.”*

<sup>1</sup> *Muhammad Karim Khan Agha J and Yousuf Ali Sayeed J.*

<sup>2</sup> Schedules 5 & 6 herein; to be read as integral constituents hereof.

<sup>3</sup> Appointed as denoted vide Schedules 7 & 8 herein; to be read as integral constituents hereof.

2. The first two petitions were listed and heard on 04.02.2025 by the Constitutional Division bench of this Court and vide interim order the Court was pleased to suspend the summons and placed a restraint upon the arrest of the petitioners; subject to providing surety<sup>4</sup>. Another five petitions were preferred eliciting similar orders from a learned bench.

3. The last two petitions were listed and heard on 10.02.2025, also by a Constitutional Division bench of this Court, however, it was unanimously concluded that the matter does not fall within the purview of the Constitutional bench, therefore, may be placed before the Regular bench<sup>5</sup>.

4. The Regular bench observed that it appeared that the Constitutional Division bench had exercised and subsequently declined jurisdiction in identical matters, hence, the matter be placed before the honorable Chief Justice for appropriate orders regarding fixation<sup>6</sup>. Per orders of the HCJ, the matter was placed before a larger bench; that observed that the Constitutional bench was obliged to assign reasons for declining jurisdiction; otherwise no case was apparent for deviating from its own orders in the pertinent past<sup>7</sup>.

5. The matter was placed once again before the relevant Constitutional Division bench wherein divergent orders were rendered by the respective learned judges<sup>8</sup>. While *Karim Khan Agha J* assumed jurisdiction in the matter, however, the same was declined by *Yousuf Ali Sayeed J*. The head of the Constitutional bench sought<sup>9</sup> for the appointment of a referee judge and the same was approved by the committee<sup>10</sup>, per Article 202A of the Constitution.

#### *Terms of reference*

6. The scope of a referee judge in Constitutional petitions, as opposed to criminal appeals, has been settled by the Superior Courts; as seen in *Muhammad Sayyar*<sup>11</sup>, *Maher Alvi*<sup>12</sup>, *Muzammil Niazi*<sup>13</sup>, and *Aijaz Hussain Jakhrani*<sup>14</sup>. The law requires the referee judge to umpire points of determination, of law and / or fact, on which members of the Division bench have differed<sup>15</sup>. In instances, as is the case herein, where the Division bench does not formulate the point/s of difference for the opinion of the referee judge, the latter is obliged to do so on his own accord.

7. Since the learned Division bench, or any member thereof, has not formulated the point/s for determination, therefore, the following points are hereby framed to address the legal and factual aspects in seriatim:

- i. What is the distribution of jurisdiction between the Constitutional and Regular benches; post incorporation of Article 202A in the Constitution, vide the 26<sup>th</sup> amendment.
- ii. Whether the present petitions fall within the domain of the Constitutional or the Regular bench.

<sup>4</sup> The order has been reproduced in Schedule 1 herein; to be read as integral constituent hereof.

<sup>5</sup> The order has been reproduced in Schedule 2 herein; to be read as integral constituent hereof.

<sup>6</sup> The order has been reproduced in Schedule 3 herein; to be read as integral constituent hereof.

<sup>7</sup> The order has been reproduced in Schedule 4 herein; to be read as integral constituent hereof.

<sup>8</sup> The orders have been reproduced in Schedules 5 & 6 herein; to be read as integral constituents hereof.

<sup>9</sup> The submission note has been reproduced in Schedule 7 herein; to be read as integral constituent hereof.

<sup>10</sup> The approval has been reproduced in Schedule 8 herein; to be read as integral constituent hereof.

<sup>11</sup> PLD 1974 Supreme Court 257.

<sup>12</sup> PLD 1980 Karachi 609.

<sup>13</sup> PLD 2003 Karachi 526

<sup>14</sup> PLD 2023 Sindh 1.

<sup>15</sup> Reference is also made to comprehensive treatise by *Adnan Iqbal Chaudhry J* in *Major Basharat vs. Sindh (CP D 1233 of 2017)*; judgment dated 04.12.2023. His lordship also encapsulated the *pari materia* effect of section 98 CPC read with clause 26 of the Letters Patent of the Lahore High Court and Rule 5 of Chapter IV-N, Volume V of the High Court Rules, the latter as applicable to the Sindh High Court.

### *Jurisdiction*

8. Article 175(2)<sup>16</sup> of the Constitution mandates that no court shall have any jurisdiction save as that conferred by law. The rendering of orders / judgments in apparent indifference to jurisdiction has been deprecated recently by the Supreme Court in *Pervez Musharaf*<sup>17</sup>. It was illumined that such apathy undermines the credibility of the entire judicial system and renders any inconsistent edicts without jurisdiction and unconstitutional.

*What is the distribution of jurisdiction between the Constitutional and Regular benches; post incorporation of Article 202A in the Constitution, vide the 26<sup>th</sup> amendment.*

### *Ambit of jurisdiction of the Constitutional bench*

9. The Constitutional bench evolved from Article 202A of the Constitution, added vide the 26<sup>th</sup> Amendment; sub article 3 thereof mandates that *no bench of a High Court other than a Constitutional bench shall exercise jurisdiction vested in the High Court under subparagraph (i)*<sup>18</sup> *of paragraph (a) and paragraph (c)*<sup>19</sup> *of clause (1) of Article 199.* The provision employs negative verbiage and the only manifest restraint is upon a bench other than a Constitutional bench.

10. Common law jurisprudence recognized writs of *mandamus*, *prohibition*, *certiorari*, *habeas corpus* and *quo warranto*. Such jurisprudence evolved in the absence of a written constitution, however, the exercise of *pari materia* jurisdiction in Pakistan is expressly determined vide Article 199 of the Constitution. While the aforementioned terms are not all expressly referenced, however, the concepts are retained therein. Article 199(1)(a)(i) confers jurisdiction analogous to the writs of *mandamus* and *prohibition* and Article 199(1)(c) confers jurisdiction to enforce fundamental rights.

11. Article 202A makes it clear that no bench of a High Court other than a Constitutional bench shall exercise jurisdiction vested in terms aforesaid. Plainly speaking, issuance of writs of *mandamus*, *prohibition* and / or enforcement of fundamental rights falls within the exclusive domain of a Constitutional bench. The verbiage of the Constitutional provision is clear and there is an embargo upon any bench, save for a Constitutional bench, from exercising the jurisdiction so explicated. While such a sanction is apparent in respect of any other bench, read as Regular bench, however, there is no restraint upon the Constitutional bench from exercising any jurisdiction conferred upon a High Court per Article 199 of the Constitution.

### *Dominant object theory*

12. The obvious issue to address next is the remit of a bench, other than the Constitutional bench; colloquially referred to as the Regular bench. An

<sup>16</sup> No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.

<sup>17</sup>Per Syed Mansoor Ali Shah J in *Taufiq Asif vs. General (retired) Pervez Musharaf & Others* (Civil Petition 3797 of 2020) and connected matters; yet unreported judgment dated 10<sup>th</sup> January 2024.

<sup>18</sup> *on the application of any aggrieved party, make an order directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do.*

<sup>19</sup> *on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.*

interim order rendered in *Attock Cement*<sup>20</sup> attempted to address this question vide resort to the dominant object or relief theory. The concept theorizes that the dominant object / relief of a petition shall determine the question of jurisdiction. The apparent consequence of application of this theory to the present scenario is that petitions seeking the dominant object / relief of writs of *mandamus*, *prohibition* and / or enforcement of fundamental rights must be placed before the Constitutional bench; whereas the remaining matters may be placed before the Regular bench.

13. Notwithstanding that the preponderant authority, referred to in *Attock Cement*, applied the theory to determine territorial jurisdiction, as opposed to distribution of jurisdiction within the same territory as is the case herein; however, to the extent of such invocation it appears consonant with the Constitutional scheme. While the application of the theory would require matters in which the dominant relief pertains to writs of *certiorari*, *habeas corpus*, *quo warranto* etc. to be placed before a Regular bench, the same could not be construed to denude a Constitutional bench of concurrent jurisdiction in such matters, given the right circumstances.

14. The right circumstances may be illustrated to encompass a scenario wherein two or more equi-dominant objects / relief are sought in a petition. If one of these objects falls within the exclusive remit of a Constitutional bench then the entire matter would be heard and determined by the said bench. Other than the scenario envisaged herein matters where the dominant object does not fall within the exclusive remit of the Constitutional bench ought to be heard by the Regular bench. So if the dominant relief / object sought in a petition is the writ of *certiorari*, *habeas corpus*, *quo warranto* etc. then the matter may be placed before the Regular bench.

15. While there is no apparent cavil to the application of the dominant object theory in determining whether a matter is to be heard by a Constitutional bench or not, however, such a determination is eventually judicial and not rested upon a petitioner's statement<sup>21</sup> or masquerade of pleadings.

#### *Masquerade of pleadings*

16. The Constitution is clear on the distribution of jurisdiction to be exercised by the High Court and the said mandate cannot be permitted to be defeated by jugglery of pleadings. The judicial system is no stranger to attempts at calibration of pleadings in attempts to invoke jurisdiction, not otherwise available. Such *masquerade* of pleadings has been consistently deprecated by the Superior Courts<sup>22</sup>.

17. Irrespective of a petitioner's statement accompanying a petition and / or the office annotation / objection in respect hereof, it is incumbent upon a bench to determine the issue of jurisdiction. The ratio illumined by the Supreme Court in *Florida Builders*<sup>23</sup> requires a court to determine the question of jurisdiction at the very onset and irrespective of whether the issue has been red-flagged by the office, counsel, litigant or otherwise. While the edict was rendered in the context of rejection of complaints, however, the ratio is considered to apply *mutatis mutandis* herein.

<sup>20</sup> *Attock Cement Pakistan Limited vs. Federation of Pakistan* (CP D 1590 of 2023); order dated 02.12.2024.

<sup>21</sup> Per Circular No. Gaz/XII.Z.14(HC)(iv) dated 06.11.2024.

<sup>22</sup> *Muhammad Saddiq & Another vs. Ruqaya Khanum & Others* reported as PLD 2001 Karachi 60; *AKD Investment Management Limited & Others vs. JS Investments Limited & Others* reported as 2020 CLD 596; *Arwen Tech Private Limited vs. Federation of Pakistan & Another* reported as 2020 MLD 649.

<sup>23</sup> Per *Saqib Nisar J* in *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as PLD 2012 Supreme Court 247.

18. Therefore, in so far as point number 1 framed for determination is concerned, it is held that Constitutional Benches enjoy exclusive jurisdiction in matters seeking relief per Articles 199(1)(a)(i), 199(1)(c) of the Constitution and in matters where the dominant and / or equi-dominant object / relief sought falls within the purview of the said provisions. The matters exclusive hereof fall may be placed before the Regular bench.

*Whether the present matters fall within the domain of the Constitutional or the Regular bench.*

*Application of the discussion to the present lis*

19. The primary object / relief sought<sup>24</sup> in the present petitions is for the impugned order<sup>25</sup> to be *declared* to have been rendered without lawful authority. *Prima facie* this object falls within the remit of Article 199(1)(a)(ii) of the Constitution; *pari materia* to seeking a writ of *certiorari*.

20. While certain consequential and / or ancillary prayers are also there in the respective prayer clauses<sup>26</sup>, yet careful consideration demonstrates that dominant object of the petitions / relief sought is with respect to the impugned order. This view is bulwarked by the fact that the sole interlocutory application preferred in the respective petitions seeks *suspension of summons* issued vide the impugned order. Therefore, suffice to state that the final relief sought is for the impugned order to be declared to be illegal and the interim relief sought is for the operation of the impugned order to be suspended.

21. Notwithstanding the foregoing, a Constitutional bench<sup>27</sup> did in fact assume jurisdiction in seven (7) petitions herein and also rendered the interim orders sought. No observation as to jurisdiction was rendered therein, however, in the last two petitions the Constitutional bench clearly *declared* that *the matter does not fall within the purview of the Constitutional bench*<sup>28</sup>.

22. The Larger bench did not render an independent determination, in so far as jurisdiction *inter se* is concerned, however, observed that *“In our considered view, since the Constitutional bench had already entertained identical matters and had also passed interim orders by granting ad-interim pre arrest bail(s); whereas, these petitions are in respect of the same Reference filed by NAB before the Accountability; therefore, it was incumbent upon the subsequent Constitutional bench to entertain these petitions; and if not, then was required to assign its reasons for not doing so; hence, proprietary demands that these matters be taken up by a Constitution bench*

<sup>24</sup> As discerned from the primary prayer clause of the respective petitions.

<sup>25</sup> *Perusal of Reference and submission note of Registrar of this Court show that prima facie a cognizable case is made out against accused persons. The Reference is, therefore, admitted, registered and numbered as "Reference No.01/2025" subject to all legal exceptions/objections, if any. Issue summons under Section 204 as per relevant law accordingly.*

<sup>26</sup> Representative prayer clause reproduced for illustration:

a. *Declare the impugned order dated 01.02.2025 passed by the Respondent No. 3, and after taken cognizance issue summons to the Respondents is arbitrary, capricious, illegal, without lawful authority & jurisdiction, null and void.*

b. *Declare that the case of the petitioners does not fall within the ambit of provisions of section 9(a)(iii)(iv)(xi) & (xii) of NAO 1999, against the petitioners as such Order to return the Reference to the Chairman NAB.*

c. *Declare that the petitioners has falsely been implicated in the Reference No.01/2025 without jurisdiction, lawful authority and violative of the fundamental rights Under Art. 4. Art. 9. Art. 10. Art. 10-A. Art. 14 and Art. 25 of the Constitution of Islamic Republic of Pakistan. 1973.*

d. *Suspend the proceedings before the Respondent No. 3 and/or Refrain the Respondent No. 1 & 2, its officers, agents, or any functionary acting on its behalf from taking any coercive measures against the Petitioners, including arrest or any adverse action, pending the disposal of their petitioners; and*

e. *Order to restrain the Respondent No. 3, to proceed with the trial against the petitioners in Reference No. 01/2025, till the final disposal of this petition.*

f. *Any other relief of this Honorable Court may deem fit and proper under the circumstances of the case.*

<sup>27</sup> The order has been reproduced in Schedule 1 herein; to be read as integral constituent hereof.

<sup>28</sup> The order has been reproduced in Schedule 2 herein; to be read as integral constituent hereof.

*presided by the head of the Constitutional Benches who shall proceed further in accordance with law and keeping in view the orders earlier passed by it.*<sup>29</sup>.

*Underline added for emphasis.*

23. In the second round before the same Constitutional bench, *Yousuf Ali Sayeed J* again declined jurisdiction in favour of the Regular bench and assigned reasons for doing so. *Muhammad Karim Khan Agha J* penned a dissent therewith predicated on dicta of the larger bench with respect to propriety. Respectfully, the decision of the larger bench explicated that reasons ought to be specified for declining jurisdiction and the emphasis on propriety was rested on the fact that two earlier Division Benches had already assumed jurisdiction and rendered interim orders.

24. Therefore, in so far as point number 2 framed for determination is concerned, consequent upon the determination of point number 1 supra, it is held that the present petitions befall squarely within the domain of the Regular bench.

### *Conclusion*

25. In view of the reasoning and rationale herein discussed, I do hereby concur with the conclusion enunciated by *Yousuf Ali Sayeed J* and reiterate the earlier order of the Division bench<sup>30</sup> that these matters do not fall within the purview of the Constitutional bench. The petitions are required to be placed before a Regular bench expeditiously, in view of the earlier order of the Division bench<sup>31</sup> giving due cognizance to the anxiety of the petitioners.

26. The matter may be placed before the honorable Chief Justice for consideration of constituting the Division bench, for announcement of the rule of Court, based on the majority opinion. The office is instructed to place copy hereof in each connected file.

Referee Judge

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<sup>29</sup> The order has been reproduced in Schedule 4 herein; to be read as integral constituent hereof.

<sup>30</sup> Order dated 10.02.2025 in CP D 508 of 2025 and CP D 538 of 2025; reproduced in Schedule 2 herein.

<sup>31</sup> As referred to at number 30; supra.

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## Schedule 1

### Orders passed in the first two petitions

*Muhammad Karim Khan Agha & Adnan Karim Memon, JJ*

CP No.D-473 of 2025

CP No.D-482 of 2025

Date	Order with signature(s) of Judge(s)
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1. For order on Misc. No.2544/2025
2. For order on office objection No.1
3. For order on Misc. No.2545/2025
4. For order on Misc. No.2546/2025
5. For hearing of main case

04.02.2025

Mr. Raj Ali Wahid Kunwar, advocate for the petitioner in CP No.D-473 of 2025

M/s. Zamir Ghumro, Muhammad Saleem and Paras Lodhi, advocates for the petitioner in CP No.D-482 of 2025

1. Urgent application is allowed.
2. Deferred for the time being.
3. Granted subject to all just legal exceptions.

4-5. Learned counsel for the petitioners being accused No.5 & 6 in Reference No.1/2025 before the learned Administrative Judge, Accountability Courts Sindh at Karachi have challenged the jurisdiction of the Accountability Court No.III to include respondents No.5 & 6 in the reference as according to them they fall under Section 4(2) (d) & (e) of the National Accountability Ordinance, 1999, as amended.

In the past a number of references have been filed against both the respondents No.5 & 6 as such this new reference against them might be based on malafides which we find gives them grounds to approach directly to this Court in respect of this issue to determine whether the Accountability Court has jurisdiction to take up the matter in respect of the petitioners.

We have been informed by the petitioners that they have been summoned for hearing by the Accountability Court in the said reverence. For the time being, summons against respondents No.5 & 6 are suspended and they shall not be arrested until the next date of hearing subject to them each providing solvent surety in the amount of Rs.100,000/- to the satisfaction of the Nazir of this Court. In the meantime, the Accountability Court shall proceed against all other persons in the reference in accordance with law until such time as the jurisdictional issue is determined by this bench.

A copy of this order shall be sent to the learned Administrative Judge, Accountability Court No.III at Karachi and National Accountability Bureau, for compliance.

Issue notice to learned DAG and Special Prosecutor NAB.

A copy of this order shall also be sent to the learned Additional Attorney General of Pakistan and Director General, NAB.

To come up on 05.03.2025. Office to place a copy of this order in connected petition.



**Schedule 2****Order passed in a subsequent petition***Muhammad Karim Khan Agha & Yousuf Ali Sayeed, JJ*

CP No.D-508 of 2025

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Date	Order with signature(s) of Judge(s)
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1. For order on Misc. No.2718/2025
2. For order on office objection No.01
3. For order on Misc. No.2719/2025
4. For order on Misc. No.2720/2025
5. For hearing of main case

10.02.2025Mr. Shoukat Hayat, advocate for the petitioners  
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1. Urgent application is allowed.
- 2-5. This matter does not fall within the purview of the Constitutional bench. Learned counsel for the petitioners expresses his anxiety. Let this case be fixed before a Regular bench today according to the roster.

Head of Const. Benches

Judge

### Schedule 3

#### Order passed by the learned Regular bench

Constitutional Petition No.D-508 of 2025  
&  
Constitutional Petition No.D-538 of 2025

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Date	Order with signature(s) of Judge(s)
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#### Constitutional Petition No.D-508 of 2025

1. For order on office objection.
2. For order on CMA No.2719/25 (Exp)
3. for order on CMA No.2720/25 (Stay)
4. For hearing of main case.

#### Constitutional Petition No.D-538 of 2025

1. For order on office objection.
2. For order on CMA No.2863/25 (Exp)
3. for order on CMA No.2864/25 (Stay)
4. For hearing of main case.

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10.02.2025

Mr. Shoukat Hayat, Advocate for the petitioners in Constitutional Petition No.D-508 of 2025.

Mr. Aamir Mansoob Qureshi, Advocate for the petitioners in Constitutional Petition No.D-538 of 2025.

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Learned counsel for the petitioners, while placing on record copies of orders passed in Constitutional Petitions No. D-473, 482, 501, 502, 503, and 506 of 2025, state that through the instant petitions, the petitioners seek enforcement of their fundamental rights, and in the subject Reference, the Constitutional bench has already granted interim relief to the petitioners in the above-referred petitions; however, in the listed cases, the Constitutional bench has declined to exercise its jurisdiction in the petitioners' case, who are also entitled to the same relief from the Constitutional bench, which passed an order today directing that these petitions be placed before the Regular bench according to the roster, observing that the listed petitions do not fall within its purview; hence, these matters may be referred to the Hon'ble Chief Justice, High Court of Sindh, for an appropriate order for fixation of these petitions. Order accordingly.

Office to place a copy of this order in the abovementioned petition

## Schedule 4

### Order passed by the learned Full bench

Constitution Petition Nos. D-508, 473, 482, 501, 502, 503, 504, 506 & 538 of 2025

Date	Order with signature(s) of Judge(s)
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*Present:*

*Mr. Justice Muhammad Junaid Ghaffar*

*Mr. Justice Zafar Ahmed Rajput*

*Mr. Justice Muhammad Iqbal Kalhoro*

#### **Fresh Case.**

1. For order on office objection No. 01.
2. For Order on CMA No. 2719/25 (Exp)
3. For Order on CMA No. 2720/25 (Stay)
4. For hearing of main case.

13.02.2025.

Mr. Shoukat Hayat and Mr. Syed Mohammad Abdul Kabir, Advocates for Petitioners in C.P No. D-508/2025.

Mr. Raj Ali Wahid, Advocate for Petitioner in CP No. D-473/2025.

M/s. Zamir Hussain Ghumro, Faizan Hussain Memon and Muhammad Saleem Khaskheli, Advocates for Petitioners in CP No. D-482/2025.

Mr. Aamir Mansoob Qureshi, Advocate for Petitioner in C.P No. D-538/2025.

Mr. Adil Channa, Advocate for petitioner in C.P Nos. 501, 502 & 503 of 2025.

Mr. Irshad Ahmed, Advocate for Petitioner in C.P No. D-504/2025.

Mr. Mr. Kashif Nazeer, Assistant Attorney General.

These matters have been placed before this Larger bench pursuant to order of the Honourable Chief Justice dated 11.02.2025 on an office note arising out of order dated 10.02.2025 passed in CP No.D-508 and 538 of 2025 by a Division bench of this Court in the following terms:-

"Learned counsel for the petitioners, while placing on record copies of orders passed in Constitutional Petitions No.D-473, 482, 501, 502, 503, and 506 of 2025, state that through the instant petitions, the petitioners seek enforcement of their fundamental rights, and in the subject Reference, the Constitutional bench has already granted interim relief to the petitioners in the above-referred petitions; however, in the listed cases, the Constitutional bench has declined to exercise its jurisdiction in the petitioners' case, who are also entitled to the same relief from the Constitutional bench, which passed an order today directing that these petitions be placed before the Regular bench according to the roster, observing that the listed petitions do not fall within its purview; hence, these matters may be referred to the Hon'ble Chief Justice, High Court of Sindh, for an appropriate order for fixation of these petitions. Order accordingly.

Office to place a copy of this order in the abovementioned petitions."

It appears that the Petitioners in C.P No. D-508 & 538 of 2025 approached the Constitutional bench<sup>32</sup> of this Court and sought an identical relief which had already been granted by another Constitutional bench<sup>33</sup> vide Order dated 04.02.2025 in C.P No. D-473 of 2025; however, when these petitions were placed before that bench on 10.02.2025, the following order was passed:-

"1. Urgent application is allowed.

2-5. This matter does not fall within the purview of the Constitutional bench. Learned counsel for the petitioners expresses his anxiety. Let this case be fixed before a Regular bench today according to the roster."

The above order of the Constitutional bench does not state any reason as to why the matter was referred to the Regular bench when earlier, another Constitutional bench headed

<sup>32</sup> Muhammad Karim Khan Agha J.(head of Constitutional Bench) and Yousuf Ali Sayeed J.

<sup>33</sup> Muhammad Karim Khan Agha J.(head of Constitutional Bench) & Adnan-ul-Karim Memon J.

by the same learned Judge had already entertained an identical matter and had even passed interim orders. It has been contended by the Petitioners Counsel that same relief ought to have been granted to these Petitioners as has already been granted to various other similarly placed Petitioners in C.P No. D-473 of 2025 and followed by another Constitutional bench<sup>34</sup> in various other petitions including C.P Nos. D- D-508, 473, 482, 501, 502, 503, 504, 506 & 538 of 2025.

On perusal of the record, their contention appears to be correct, as the Constitutional bench<sup>35</sup> without assigning any reasons, had referred the matter to the Regular bench on the same date.

In our considered view, since the Constitutional bench had already entertained identical matters and had also passed interim orders by granting ad-interim pre arrest bail(s); whereas, these petitions are in respect of the same Reference filed by NAB before the Accountability; therefore, it was incumbent upon the subsequent Constitutional bench to entertain these petitions; and if not, then was required to assign its reasons for not doing so; hence, proprietary demands that these matters be taken up by a Constitution bench presided by the head of the Constitutional Benches who shall proceed further in accordance with law and keeping in view the orders earlier passed by it.

Accordingly, referred issue regarding exercise of jurisdiction in these two petitions stands answered accordingly. This matter be placed before a Constitution bench presided by the head of the Constitutional Benches by the office along with connected petitions on 17.02.2025.

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<sup>34</sup> Muhammad Karim Khan Agha J.(head of Constitutional Bench) & Ms. Sana A. Minhas J.

<sup>35</sup> Muhammad Karim Khan Agha J.(head of Constitutional Bench) and Yousuf Ali Sayeed J.

## Schedule 5

### Order passed by Yousuf Ali Sayeed J

**YOUSUF ALI SAYEED, J.** The Petitioners in C.P Nos. D-508 and D-538 of 2025 have impugned the Order dated 01.02.2025 made by the Administrative Judge, Accountability Court No.III, Karachi, taking cognizance of Reference No.01/2025 filed by the National Accountability Bureau ("**NAB**"), and the summons issued to them in that regard. They seek that the same be declared null and void and the Reference be quashed. The respective prayer clauses of those Petitions read as follows:-

#### C. P. No. D-508 of 2025

- a. *Declare the impugned order dated 01.02.2025 passed by the Respondent No. 3, and after taken cognizance issue summons to the Respondents is arbitrary, capricious, illegal, without lawful authority & jurisdiction, null and void.*
- b. *Declare that the case of the petitioners does not fall within the ambit of provisions of section 9(a)(iii)(iv)(xi) & (xii) of NAO 1999, against the petitioners as such Order to return the Reference to the Chairman NAB.*
- c. *Declare that the petitioners has falsely been implicated in the Reference No.01/2025 without jurisdiction, lawful authority and violative of the fundamental rights Under Art. 4. Art. 9. Art. 10. Art. 10-A. Art. 14 and Art. 25 of the Constitution of Islamic Republic of Pakistan. 1973.*
- d. *Suspend the proceedings before the Respondent No. 3 and/or Refrain the Respondent No. 1 & 2, its officers, agents, or any functionary acting on its behalf from taking any coercive measures against the Petitioners, including arrest or any adverse action, pending the disposal of their petitioners; and*
- e. *Order to restrain the Respondent No. 3, to proceed with the trial against the petitioners in Reference No. 01/2025, till the final disposal of this petition.*
- f. *Any other relief of this Honorable Court may deem fit and proper under the circumstances of the case."*

#### C. P. No. D-538 of 2025

- i. *Direct the Respondents No. 1 to perform its statutory duties in accordance with the National Accountability Ordinance, 1999, as amended, and to ensure that the Petitioners fundamental rights enshrined in the Constitution of the Islamic Republic of Pakistan, 1973, are not violated;*
- ii. *Declare that Reference No. 1 of 2025, to the extent of the Petitioners, is without jurisdiction, unlawful, coram non judice, and violative of the Petitioner's fundamental rights under Articles 3, 4, 9, 10, 10-A, and 14 of the Constitution, and in disregard of the National Accountability Ordinance, 1999, as amended, and that all proceedings initiated therein, including the issuance of summons, are null, void ab initio, and of no legal effect.*
- iii. *Set aside, and during the pendency of the present petition, suspend the operation of Impugned Order dated 01.02.2025 and Impugned Summons dated 03.02.2025, issued against the petitioners.*
- iv. *Quash the Subject Reference 1 of 2025 filed by the Respondent No. 1 before the Respondent No. 2.*
- v. *Suspend the proceedings before Respondent No. 2 and/or Restrain the Respondent No. 1, its officers, agents, or any functionary acting on their behalf from taking any coercive measures against the Petitioners, including arrest or any adverse action, pending the disposal of this petition; and*
- vi. *Direct the Respondent No.1 to submit report justifying filing of Subject Reference in lieu of the Amending Acts, particularly Sections 4(2)(d) and (e);*
- vii. *Any other relief deemed just and proper in the circumstances of the case may also be granted."*

2. On 10.02.2025, being the first date that those Petitions came up in Court, it was observed that the same did not fall within the purview of a Constitutional bench. Ergo, the Office was directed to place both matters before the concerned Regular bench, according to Roster. As it transpires, on 10.02.2025 the Regular bench was pleased to then refer the matters to the Honourable Chief Justice for appropriate orders regarding their fixation in view

of the fact that analogous Petitions bearing CP Nos. D-482, 473, 501, 502, 503, 504 and 506 of 2025 had earlier been entertained by a Constitutional bench. Thereafter, pursuant to the administrative Order made by the Honourable Chief Justice on a Note put up by the Office, all of those matters were placed before a larger three-Member bench, which observed in terms of an Order dated 13.02.2025 that since identical matters had earlier been entertained by a Constitutional bench with interim orders also having been made, it was incumbent upon the subsequent Constitutional bench to entertain the latter Petitions or to assign reasons for not doing so.

3. It merits consideration in that regard that all the Petitions essentially fall within the parameters of Article 199(i)(a)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973, and in light of the principle laid down by a learned Division bench of this Court vide an Order dated 02.12.2024 made in C. P. No. D-1590 of 2023 (Re-Attock Cement Pakistan Ltd and others v. Federation of Pakistan and others) and connected cases, fall within the domain of the Regular bench.

4. Indeed, the jurisdiction of this Court under Article 199 of the Constitution following the 26<sup>th</sup> Amendment was specifically considered in that case, with it being laid down that the jurisdiction of the Constitutional bench as per Article 202A(3) of the Constitution was restricted to matters falling within the scope of Article 199(i)(a)(i) and Article 199(i)(c) thereof and that other matters could only be entertained by such bench when working under the Roster of the Honourable Chief Justice. The relevant excerpts from that Order read as under:-

"19. We now turn to the High Court's jurisdiction determination under Article 199 following the 26<sup>th</sup> Amendment. Article 199 now has to be read with Article 202A, which reads as hereunder:

**"202A. Constitutional Benches of High Courts.**

(1) There shall be Constitutional Benches of a High Court comprising such Judges of a High Court and for such term as may be nominated and determined by the Judicial Commission of Pakistan as constituted under clause (5) of Article 175A, from time to time.

(2) The most senior Judge amongst Judges nominated under clause (1) shall be the Head of the Constitutional Benches.

(3) No bench of a High Court other than a Constitutional bench shall exercise jurisdiction vested in the Court under subparagraph (i) of paragraph (a) and paragraph (c) of clause (1) of Article 199.

(4) For the purposes of clause (1), a bench, to be nominated by a committee comprising the Head of the Constitutional Benches and next two most senior Judges from amongst the Judges nominated under clause (1), shall hear and dispose of such matters.

(5) All petitions under sub-paragraph (i) of paragraph (a) and paragraph (c) of clause (1) of Article 199 or appeals therefrom, pending or filed in a High Court prior to commencement of the Constitution (Twenty-sixth Amendment) Act, 2024 (XXVI of 2024), subject to clause (7), forthwith(6) Notwithstanding anything contained in the Constitution but subject to an Act of Majlis-e-Shoora (Parliament) in respect of the Islamabad High Court and an Act of Provincial Assembly in respect of other respective High Courts, a High Court may make rules regulating the practice and procedure of the Constitutional Benches.

(7) This Article shall come into force, if in respect of

(a) the Islamabad High Court, both Houses of Majlis-e-Shoora (Parliament) in the joint sitting; and

(b) a High Court, the respective Provincial Assembly, through a resolution passed by majority of the total membership of the joint sitting or the respective Provincial Assembly, as the case may be, give effect to the provisions of this Article stand transferred to the Constitutional Benches and shall only be heard and decided by Benches constituted under clause (4).

20. It is a trite proposition that all benches/judges of the High Court, inter alia, before the 26<sup>th</sup> Amendment, exercised powers without any divisions under Article 199 of the 1973 Constitution. However, following the 26<sup>th</sup> Amendment, it appears that the benches/judges of the High Courts have been split, including the subject-matter power to grant relief/remedy and to make rules regulating the practice and procedure of the benches (judges) of the High Court. The two categories of constitution benches may be described as follows: (i) the constitutional bench under Articles 199(1)(a)(ii) and (b) dealing with all nature of writs of certiorari and habeas corpus, as well as all other reliefs, remedies, powers, jurisdictions, etc. available under the 1973 Constitution excluding Articles 199(1)(a)(i) and 199(1)(c) (hereinafter referred to as "Constitution bench "A""); and, (ii) the constitutional bench under Article 202A having limited powers dealing with restricted subject-matter relief/remedies

under Articles 199(1)(a)(i) and Article 199(1)(c) only (hereinafter referred to as "Constitution bench "B")..."

"21. It may be noted that constitutional empowerment was not provided to this High Court by virtue of Article 202A; but it is Article 175 that has empowered and continues to empower the entire High Court, including all its benches/judges, to continue to perform their constitutional functions within the framework of the Constitution. It may be clarified that whereas the Chief Justice, as the Master of the Roll, determines the practice and procedure of the High Court, including making the Roster for the entire High Court, his/her powers to make such Roster for its benches (judges) ends as and when a petitioner arrives at the proverbial doorstep of the High Court seeking directions from the High Court under Article 199(1)(a)(i) and 199(1)(c). At this point, with the triggering of Article 202A(6), the assignment of such work, i.e. further dealing with a petition seeking remedy/relief under Article 199(1)(a)(i) and Article 199(1)(c), is to be handled by the constitution bench of the High Court created under Article 202A(3) with its bench (judges) and Roster assigned to such benches (judges) of the High Court under the machinery of Article 202A of the 1973 Constitution."

"28. As the birth of Article 202A(3) "Constitutional Benches" starts, outside the womb of the High Court, it does not enjoy all the powers, jurisdictions, remedies/reliefs enjoyed by its parent, the Constitutional High Court. Instead, the newly created "Constitutional Benches" inherits only the limited and narrow Roster assignment by the Constitution and powers articulated in Article 202A, limiting its legislative assignment to exercising jurisdiction in the High Court under Article 199(1)(a)(i) and Article 199(1)(c) of the 1973 Constitution only. In its infinite wisdom, the Legislature has not blessed the "Constitutional Benches" of the High Court with the entire gambit of constitutional reliefs/remedies, powers, and jurisdiction. This, the Legislature, has kept reserved for the Constitutional High Court (not including Article 199(1)(a)(i) and Article 199(1)(c)) to grant its relief/remedy based on sound judicial discretion and where there are "special and important" reasons therefore, to continue to exercise its broader and wider constitutional jurisdiction. When the bench (judges) of the Article 202A(3) "Constitutional Benches" carry out their assignment as assigned by the Legislature under the Roster of the "Constitution Benches" under Article 202A(6), they do so wearing only one (1) hat, i.e. the hat of the limited relief/remedies in constitutional matters expressed in Articles 199(1)(a)(i) and Article 199(1)(c). Thereafter, only if the bench (judges) subsequently work under the Roster of the Chief Justice of the High Court, proceeding with cases assigned by the Chief Justice of the High Court, as per his/her Roster only, then such benches (judges) exercise the same powers as those available to the benches (Judges) of the Constitution High Court."

"30. Based on the reading of the ouster clause under Article 202A, the following position emerges with regard to the "Constitutional Benches" under Article 202A(3).

(i) "Constitutional Benches" created under Article 202A(3) referred interchangeably in this Order as Constitution bench "B" have no jurisdiction to issue declaration of illegality or unconstitutionality under Article 199(1)(a)(ii). Also, it has no jurisdiction under Article 199(1)(b)(i) to issue writ of habeas corpus or under Article 199 (1)(b)(ii) to issue a writ of quo warranto. It is important to note here that all the aforementioned writs of declaration/certiorari, habeas corpus and quo warranto may involve questions of constitutionality and/or fundamental rights.

(ii) The constitutional assignment/roster of the "Constitutional Benches" (or Constitution bench "B"), in relation to fundamental rights is limited to the relief/remedy under Article 199(1)(c). Article 199(1)(c) is limited to giving directions for enforcing any of the fundamental rights. As explained in various judgments, this specific relief for the enforcement of fundamental rights is about the issuance of positive directions, i.e. positive enforcement of fundamental rights. In other words, Article 199(1)(c) does not cover all cases of enforcement of fundamental rights but only such cases which involve such positive directions. This means that cases covered under Article 199(1)(a)(ii) or (b)(i) and (ii) [cases of declaration, habeas corpus and quo warranto] can also involve the enforcement of fundamental rights.

31. In view of paragraphs 30 (i) and (ii) above, two further characteristics of the "Constitutional Benches" or Constitution bench "B" can be inferred. Firstly, the assignment/roster of the "Constitutional Benches" is not determined by the subject matter or content of the dispute before them but by the specific relief/remedy being sought through the prayer clause. In short, it is the remedy which determines the jurisdiction. Secondly, the term "Constitutional Benches" does not mean that they alone have exclusive jurisdiction on constitutional or fundamental rights matters under Article 199, but rather their jurisdiction on constitutional and fundamental rights matters is limited to matters in which the relief/remedy sought is covered by Article 199 (1)(a)(i) and Article 199 (1)(c) only. Thus, they can only examine matters to the extent of their assignment as articulated under Article 202A(3) viz. issuing directions concerning writ of mandamus and issuing directions for the enforcement of Fundamental Rights conferred by Chapter I of Part II of the 1973 Constitution.

32. In a petition where the petitioner both seeks directions of prohibitory or mandamus relief under Article 199(1)(a)(i) as well as declaratory relief under Articles 199(1)(a)(ii), then which constitutional bench of the High Court will have jurisdiction to decide the matter, i.e. either Constitutional bench "A" or "B"? An analogy can be drawn to the tests of "dominant object" and "ultimate relief" developed in jurisprudence on territorial jurisdiction. In a recent 4-member bench judgment of the Supreme Court in the case of *Taufiq Asif v General (Retd.) Pervez Musharraf*, the test was laid down by the apex Court to determine the territorial jurisdiction of the High Courts. The judgment reviewed past precedents on the subject and held that "the ratio of these cases is that it is the dominant object of the petition, i.e., the main grievance agitated and the ultimate relief sought in the petition, which determines the territorial jurisdiction of the High Courts." The aforementioned precedent can be analogized in the instant issue by using a similar test to determine whether the lis is beyond the jurisdiction of the other benches after the 26<sup>th</sup> Amendment. Thus, in our opinion, the matter may be decided in terms of the dominant relief being sought. Is the dominant relief in the petition declaratory or directory (prohibitory or mandamus)? If the dominant relief is declaratory and the directory prohibitory or mandamus relief is merely consequential to such declaratory relief, then the Constitutional bench "A" of the High Court, i.e. will have the Roster, but if the directory prohibitory or mandamus relief is dominant, then the Constitutional bench "B" will deal with the assignment/work. Ultimately, the exercise may be an art rather than an exact science. For example, take the case of a petition filed for a missing person or free will. First, is the relative of the missing person seeking relief under Article 199(1)(b)(i) for directions to produce the detenu? Or, is s/he seeking positive directions under Article 199(1)(c) for enforcement of Fundamental Rights conferred under Article 8 (security of persons), Article 9 (safeguards as to arrests and detention), Article 14 (inviolability of dignity of man), etc.? What will be the dominant relief since both writs seek to issue directions from the Court? Chapter 2, Article 35 of the 1973 Constitution (protection of family, etc.) may also be in play. The dominant relief can fall in either of the two benches, i.e. the Constitutional High Court's Constitutional bench "A", or the Article 202A "Constitutional Benches", Constitutional bench "B". In either case, the exercise will involve an examination of the petition, hearing(s), etc. or, at the very least, perusing the prayer clause of the petition, ultimately, with the view of understanding what is the dominant relief being claimed by the petitioner and which bench is best suited to hear the lis. Suffice it to say that there can be no hard and fast rules and is incapable of a complete and exhaustive protocol that comprehends all the permutations to which such protocol would apply, which in fact will vary depending upon the facts and circumstances of the matter at the time of examination of the petition."

5. In all these matters the Petitioners have assailed the judicial act of the Accountability Court in taking cognisance of a Reference, with the dominant relief as per the prayers advanced by them being in the nature of certiorari, falling under Article 199(i)(a)(ii) of the Constitution. As such, the principle laid down by the Division bench is squarely applicable and binding under the circumstances, where as per the design of the Roster Sitting prevailing on 10.02.2025 as well as that presently in the field, another regular Division bench has specifically been tasked by the Honourable Chief Justice with hearing Petitions relating to matters pertaining to NAB and the orders and proceedings emanating from or pending before the Accountability Courts.

6. Needless, to say, the mere fact that an earlier Constitutional bench may have inadvertently embarked upon the proceedings in previous Petitions on the same subject does not alter the scheme of Article 199 read with Article 202A, as interpreted in the case of *Attock Cement (supra)*, in respect of which no view to the contrary has been expressed in the Order dated 13.02.2024. Thus, as matters stand, the Constitutional bench stands precluded from proceeding with the captioned Petitions in deference to the principle laid down in that case, unless otherwise tasked to do so as per the Roster issued by the Honourable Acting Chief Justice.



## Schedule 6

### Order passed by Muhammad Karim Khan Agha J

**Mohammed Karim Khan Agha J.** I have had the privilege to read the Order passed by my brother Mr. Justice Yousaf Ali Sayeed in respect of the same matter but I unfortunately I am unable to agree with the same and hence pass my own order as set out below.

2. Initially a number of Constitutional petitions were filed before a Constitutional bench of this court seeking quashment of Reference 01/25 which had been filed under the National Accountability Ordinance (as amended) 1999 (NAO) by the National Accountability Bureau (NAB) before the Accountability Courts in Karachi. This court was pleased to issue notice to the DAG and Special prosecutor NAB and grant bail to the petitioners pending final disposal of the petitions. Later other petitioners applied before this court for similar relief however this court sent the matter to the regular bench for hearing. The regular bench referred the matter to the Chief Justice who Constituted a 3 member regular bench which vide order dated 13.02.2025 referred the matter back to this Constitutional bench in the following terms in relevant part;

"In our considered view, since the Constitutional bench had already entertained identical matters and had also passed interim orders by granting ad-interim pre arrest bail(s); whereas, these petitions are in respect of the same Reference filed by NAB before the Accountability; therefore, it was **incumbent upon the subsequent Constitutional bench to entertain these petitions**: and if not, then was required to assign it reasons for not doing so; hence, proprietary demands that these matters be taken up by a Constitution bench presided by the head of the Constitutional Benches who shall proceed further in accordance with law and keeping in view the orders earlier passed by it." (Bold added)

3. I find that we are bound under the law by the order of the 3 member bench as we are only a two member bench. Propriety also demands that we hear these petitions as a Constitutional bench of this court had earlier announced interim orders in respect of the same reference where similar relief was sought. Even otherwise this bench has jurisdiction to hear cases which could be heard before the regular bench.

4. Accordingly the petitioners in CP.D Nos.508 and 538 and are entitled to the same relief which has already been granted to the petitioners in CPs No. D-501, 502,503,504,and 506 of 2025 who had also sought the quashment of the Reference No.1 of 2025 before the learned Administrative Judge Accountability Court at Karachi on the basis that the reference is not maintainable under the NAO and that the Accountability Court has no jurisdiction to decide the aforesaid Reference.

5. Issue notice to learned DAG and Special Prosecutor NAB in petitions CP.D 508/25 Mohammed Siddiq Majid, Syed Nishat Ali Rizvi and Mohammed Shahid Hassan V NAB and in CPD 538/25 Ziauddin Sabir, Akhtar Ali Meo and Nasir V NAB. In the meantime, no arrest shall be made in respect of petitioners Mohammed Siddiq Majid, Syed Nishat Ali Rizvi, Mohammed Shahid Hassan, Ziauddin Sabir, Akhtar Ali Meo and Nasir until the next date of hearing subject to them each furnishing solvent surety in the amount of Rs. 100,000/- and PR bond in the like amount to the satisfaction of the Nazir of this Court. However, the Accountability Court shall proceed against all the aforesaid petitioners in the reference expeditiously in accordance with law.

6. A copy of this order shall be sent to the learned Administrative Judge. Accountability Court Sindh at Karachi, for compliance.

7. To come up on 05.03.2025 with all connected petitions. Office to place a copy of this order in connected petitions.

## **Schedule 7**

### **Submission Note for appointment of Referee Judge**

Submitted

I am directed to submit that in C.P.Nos.D-508 of 2025 along with C.P.No.D-482, 473, 501 to 504, 506 and 538 of 2025, a Constitutional Division bench comprising of Hon'ble Mr. Justice Muhammad Karim Khan Agha and Hon'ble Mr. Justice Yousuf Ali Sayeed have not reached an agreement and have passed separate orders. Accordingly, office is directed to place this matter before the Head of Constitutional Benches, constituted for appointment of a Referee Judge.

Court Associate to Hon'ble  
Mr. Justice Muhammad Karim Khan Agha

## **Schedule 8**

### **Appointment of the Referee Judge**

SUBMITTED:

It is respectfully submitted that a submission note at Flag-A was placed before Hon'ble Mr. Justice Muhammad Karim Khan Agha, Head of the Constitutional Benches and his lordship has been pleased to pass the following orders: -

"The Committee under Article 202-A of the Constitution met via Whatsapp on 25.02.2025 and approved the appointment of Mr. Justice Agha Faisal as Referee Judge. To be placed before Mr. Justice Agha Faisal at 11:00 am on Thursday 27th Feb."

Submitted for kind perusal and approval.

DEPUTY REGISTRAR (JUDL)