

# THE HIGH COURT OF SINDH KARACHI

## Present:

Mr. Justice Adnan Iqbal Chaudhry

Mr. Justice Muhammad Jaffer Raza

C.P. No. D – 5598 of 2025

[Barrister Ali Tahir versus FOP and others]

### Fresh Case:

1. For order on CMA No.24104 of 2025
2. For order on Office Objections 1 to 4.
3. For order on CMA No.23418 of 2025.
4. For order on CMA No.23419 of 2025.
5. For order on CMA No.23420 of 2025.
6. For hearing of Main Case.

Petitioner : Barrister Ali Tahir, Advocate -  
In person.

Date of hearing : 28-11-2025

Date of decision : 28-11-2025

## ORDER

**Adnan Iqbal Chaudhry J.** – 1] Urgency granted. 2] Since the petition is before a Constitutional Bench, office objection No.1 is satisfied. Office objection No.2 is deferred. Office objection No.3 is addressed *infra*. In view of *Malik Asad Ali v. Federation of Pakistan* (PLD 1998 SC 161), the Petitioner satisfies the test of aggrieved person. Therefore, office objection No.4 is overruled. 3] Exemption granted subject to all just exceptions.

4-6] The Petitioner, an Advocate of this Court, has challenged the Twenty-Seventh Amendment to the Constitution of Pakistan. Along with that, he also prays for a writ of *quo warranto* to Judges of the Federal Constitutional Court [FCC] who have been arrayed as Respondents 2 to 8. Office objection No.3 is on this latter prayer. The objection of course emanates from sub-Article (5) of Article 199 of the Constitution, whereby superior Court Judges, while acting in such capacity, are excluded from the purview of writ jurisdiction. Learned counsel submits that a petition for *quo warranto* against superior Court Judges is not so excluded as observed by this Court in *Sindh High Court Bar Association v. Federation of Pakistan* (PLD 2009 Karachi 408).

Indeed, it was settled by the Supreme Court in *Malik Asad Ali v. Federation of Pakistan* (PLD 1998 SC 161) that when a petition seeking information in the nature of *quo warranto* is brought against a Judge of a superior Court, it is not hit by sub-Article (5) of Article 199 of the Constitution. However, the ratio of that needs to be appreciated, which is in para 77 of the judgment as follows:

“A petitioner in a petition filed against a Judge of the superior Court seeking information in the nature of *quo warranto*, does not challenge any action or order of a Judge passed in his capacity as a Judge of the Court or a member of the Court. The qualification to hold the office of a Judge is personal to the individual and has nothing to do with his performance of duty as a Court or member of the Court. The qualifications for appointment of Judges of the superior Court are laid down meticulously in the Constitution. To possess the qualifications prescribed under the Constitution is a sine qua non for an individual to hold the office of a Judge of superior Court. Therefore, when the appointment of a Judge of superior Court is challenged on the ground that he did not possess the qualification prescribed by the Constitution, the relator is not asking the Court to strike down any of his actions which he has performed or is performing as a Judge of the superior Court but asks for examination of his personal qualification to be entitled to hold the office of the Judge of superior Court. Such an exercise, in our humble opinion, does not fall within the mischief of the provision of Article 199 (5) of the Constitution. We are, therefore, in no doubt that a petition seeking information in the nature of *quo warranto* lies against the Judge of a superior Court under Article 199 of the Constitution.”

It is thus due to the very nature of a writ of *quo warranto viz.* “to show under what authority of law he claims to hold that office”, that such writ can still issue against a superior Court Judge notwithstanding sub-Article (5) of Article 199.

Here, the Petitioner does not seek any inquiry in the nature of a *quo warranto* into the appointment of Judges of the FCC; rather it is acknowledged that they hold such office by virtue of the Twenty-Seventh Amendment. The challenge to their appointment is predicated, not on the absence of a prescribed qualification, but on the challenge to the Twenty-Seventh Amendment itself. Therefore, till such time that Amendment stands, there is no separate cause for a writ of *quo warranto* against said Judges. As also observed in the case of *Sindh High Court Bar Association*, a petition for *quo warranto* is for a

distinct writ and has to stand independent of a collateral challenge. Having settled that, we do not approve of the Petitioner using this forum to make remarks against the person of FCC Judges as in paras 2 and 3 of the petition. The petition should be confined to legal grounds.

For the foregoing reasons, office objection No.3 is sustained. Prayer clause 4 is therefore dismissed in *limine*. For the remaining prayers and to address office objection No.2, the Petitioner may file an amended petition after deleting Respondents 2 to 8 and all references to them. If an amended petition is not so filed in 10 days, the office shall list the petition for non-prosecution.

JUDGE

JUDGE

SHABAN\*