

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.1100/13;
Date of inst. 23.07.2013;
Date of decision 16.08.2013.

1. Abdul Majid Khan, Member Azad Jammu & Kashmir Legislative Assembly;
2. Akhtar Hussain Rabbani, Member Azad Jammu & Kashmir Legislative Assembly;
3. Ch. Muhammad Arshad, Member Azad Jammu & Kashmir Legislative Assembly;
4. Barrister Sultan Mehmood Chaudhry, Member Azad Jammu & Kashmir Legislative Assembly;
5. Syed Azhar Gillani, Member Azad Jammu & Kashmir Legislative Assembly;
6. Ch. Muhammad Rasheed, Member Azad Jammu & Kashmir Legislative Assembly;
7. Ali Shan Soni, Member Azad Jammu & Kashmir Legislative Assembly;
8. Afsar Shahid, Member Azad Jammu & Kashmir Legislative Assembly;
9. Muhammad Hussain Sargala, Member Azad Jammu & Kashmir Legislative Assembly;
10. Muhammad Attique-ur-Rehman Faizapuri, Member Azad Jammu & Kashmir Legislative Assembly;
11. Akbar Ibrahim, Member Azad Jammu & Kashmir Legislative Assembly;

....Petitioners

VERSUS

1. Speaker Azad Jammu & Kashmir Legislative Assembly Muzaffarabad;
2. Secretary Azad Jammu & Kashmir Legislative Assembly Muzaffarabad;
3. Azad Jammu & Kashmir Government through its Chief Secretary;
4. Chief Election Commissioner, Azad Jammu & Kashmir Muzaffarabad.

....Respondents

WRIT PETITION

Before: **Justice Ghulam Mustafa Mughal, C.J**
 Justice M. Tabassum Aftab Alvi, J
 Justice Abdul Rasheed Sulehria, J
 Justice Sardar Abdul Hameed Khan, J
 Justice Ch. Jahandad Khan, J
 Justice Azhar Saleem Babar, J

PRESENT:

M/s Raja Muhammad Hanif Khan, Sadaqat Hussain Raja, Anjum Nisar Mir & Raja Sajjad Ahmed, Advocates for the petitioners.

M/S Mushtaq Ahmed Janjua, Advocate, Ch. Shaukat Aziz and Sardar M.R.Khan, AAG for respondents No.1 to 3.

Nemo for respondent No.4.

Mr. Abdul Rasheed Abbasi, Advocate, as amicus curiae.

JUGEMENT:

(Justice Ghulam Mustafa Mughal, C.J) Through this petition filed under section 44 of the Azad Jammu & Kashmir Interim Constitution Act, 1974 order passed by the Speaker Legislative Assembly of Azad Jammu & Kashmir dated 23rd July 2013 whereby resignations of the petitioners No.1 to 3, herein, have been accepted and the seats occupied by them have been declared vacant, is challenged for having been issued without lawful authority.

Precise facts forming the background of the instant petition are that petitioners, herein, are elected members of the Legislative Assembly of Azad Jammu & Kashmir. It is alleged that on 22.07.2013 Abdul Majid Khan and Muhammad Hussain Sargala, petitioners No.1 and 9, herein, moved a resolution for the vote of no confidence against the Prime Minister of Azad Jammu & Kashmir which appears to have been received in the Assembly Secretariat at 8:05 A.M. It is further alleged that a day after the receipt of resolution for a vote of no confidence, Speaker of the Azad Jammu & Kashmir Legislative Assembly wrote a letter to the learned Chief Election

Commissioner stating therein that Abdul Majid Khan, Akhtar Hussain Rabani and Ch. Muhammad Arshad members of the Legislative Assembly have tendered their resignations which have been accepted and as a result whereof their seats are declared vacant, hence, the proceedings in the terms of section 25(1)(a) of the AJ&K Interim Constitution Act, 1974 may be initiated. The learned Speaker of the Legislative Assembly declared that the seats of the aforesaid members vacant. The aforesaid members controverted the factum of resignations through different statements appeared in different newspapers. The other petitioners also apprehend that on the basis of forged and concocted resignations their seats are also likely to be declared vacant, therefore, the Speaker of the Legislative Assembly may be restrained from taking any action against them. The precise case of the petitioners is that they are sitting members of the Legislative Assembly and have not submitted any resignation from the membership of the Azad Jammu & Kashmir Legislative Assembly in the terms of section 25(1)(a) of the AJ&K Interim Constitution Act, 1974. The alleged receipt of resignations on behalf of the petitioners by the Speaker is frivolous, bogus and concocted. The resignations of the petitioners have been procured in order to frustrate the resolution for a vote of no confidence moved against the Prime Minister of Azad Jammu & Kashmir. They have further claimed that the action of the Speaker is illegal and violative of Section 18 of the Interim Constitution Act, 1974 and Rule 29(2) of the Rules of Procedure of the Azad Jammu & Kashmir Legislative Assembly. It is stated that petitioners have a constitutional right to move resolution for a vote of

no confidence against the Prime Minister and the Speaker is duty bound to summon the session of the Assembly which is being procrastinated by him without lawful authority and in a sheer violation of the Constitution. The petitioners in the above stated background sought quashment of the notification issued by the Speaker Legislative Assembly addressed to the Chief Election Commissioner and also sought a direction to him for summoning the session of the Assembly in order to finalize the process for a vote of no confidence against the Prime Minister.

The petition has been resisted by the respondents by filing written statement. It is pleaded by them that petitioners have deliberately and intentionally mis-stated the facts before the Court on the one hand and suppressed some material facts on the other hand, hence, have not filed the petition with clean hands, therefore, they are not entitled to discretionary relief by this Court. It is stated by them that an efficacious and alternate remedy is available to the petitioners therefore, this petition merits dismissal. It is further stated that petitioners are estopped by their conduct. The nutshell reply of the respondents is that the Speaker of the Legislative Assembly of Azad Jammu & Kashmir has not procured or concocted fictitious or bogus resignations as has been claimed by the petitioners in their petition rather the resignations accepted by the Speaker are hand written of the petitioners and have been addressed to the competent authority therefore, the Speaker was left with no alternative except to accept the resignations and declare the seats, occupied by the petitioners, vacant

and inform the Chief Election Commissioner for by-Elections in the terms of section 25(4) of the Interim Constitution Act, 1974.

Raja Muhammad Hanif Khan, the learned Advocate appearing for the petitioners vehemently argued that it is an admitted fact that petitioners No.1 and 9 are members of the Legislative Assembly and after fulfilling the pre-requisite of Section 18 of the Interim Constitution Act, 1974 they moved a resolution for a vote of no confidence against the Prime Minister of Azad Jammu & Kashmir on 22.07.2013. This resolution, according to the learned Advocate, was received in the Assembly Secretariat at 8:05 A.M as is evident from annexure 'PB/1'. The learned Advocate contended that it is unbelievable that petitioners who moved for a vote of no confidence have submitted their resignations a day after the receipt of said resolution. The learned Advocate further contended that tendering of the resignations on behalf of the petitioners and so-called acceptance of the resignations and declaring their seats vacant vide order dated 23.07.2013 by the Speaker of the Legislative Assembly is without lawful authority. The action of the Speaker of the Legislative Assembly, according to the learned advocate, is an after thought and whole proceedings have been taken in order to frustrate and defeat the resolution for a vote of no confidence against the Prime Minister. The learned Advocate submitted that copies of the resignations appended with the written statement have not been supplied to the petitioners but on the face of it these letters cannot be termed as resignations, which in fact have been procured and concocted by the Speaker of the Legislative Assembly in connivance with the other respondents in

order to defeat the constitutional right of the petitioners to move for a vote of no confidence. The learned Advocate maintained that resignations can be tendered by a member of Legislative Assembly in writing to the Speaker but in the instant case so-called resignations did not bear any time and date therefore, in the given situation the Speaker was duty bound to hold an inquiry regarding genuineness of the resignations and after being satisfied that petitioners have tendered the resignations voluntary can declare the seats vacant. The learned Advocate maintained that the Speaker has also failed to comply with the principle of natural justice while sending the reference against petitioner No.9 to the Chief Election Commissioner on the alleged disqualification which was awaiting disposal before him since long. The learned Advocate also contended that act of sending the reference against petitioner No.9 at this stage when he was a signatory of the resolution for a vote of no confidence was mala-fide and has been made to frustrate and defeat the resolution for a vote of no confidence. He argued that before sending the reference it was enjoined upon the Speaker to apply his mind and provide a right of hearing to the petitioner because the Speaker is not supposed to perform the role of postman rather was duty bound to ascertain and satisfy himself that the disqualification alleged to the petitioner in fact is attracted. The learned Advocate in support of his submissions placed reliance on the following cases:-

1. Mirza Tahir Beg vs. Syed Kausar Ali Shah and others. (PLD 1976 SC 504);
2. Mian Muhammad Nawaz Sharif vs. President of Pakistan and others. (PLD 1993 SC 473);

3. Abdul Razique Khan vs. The Province of Sindh through the Chief Secretary, Government of Sindh, Karachi and 3 others. (PLD 1994 SC 79);
4. Muhammad Naeem Akhtar and 2 others vs. The Speaker, Sindh Provincial Assembly and others. (1992 CLC 2043);
5. Munawar Khan vs. Speaker, N.W.F.P Provincial Assembly and 2 others. (1992 MLD 2065); and
6. Muhammad Younis Tahir & another vs. Ch. Shaukat Aziz and others. (2012 SCR 213).

Conversely, Mr. Mushtaq Ahmed Janjua, the learned Advocate appearing for the respondents vehemently argued that the resignations have been addressed to the Speaker of the Legislative Assembly and are hand written of the petitioners hence, no inquiry was required in the circumstances of this case by the Speaker of the Legislative Assembly. The learned Advocate contended that even the Court itself can make a comparison of the signatures of the petitioners put by them on the resignations and on the record appended with the petition. The learned Advocate further contended that mere mentioning of fact that the authority is given to the Co-Chairperson of the Pakistan People Party for utilizing the resignations at a proper time does not render the resignations invalid and ineffective. The learned Advocate submitted that the question as to whether resignations have been procured maliciously and fraudulently by the Speaker is a pure question of fact which require detailed inquiry and probe hence, the matter cannot be gone into by this Court in exercise of extraordinary jurisdiction. The learned Advocate further argued that after giving unconditional undertaking, commitment in shape of resignations the petitioners cannot come with volta-face and say that they have not tendered their resignations from the membership of the Legislative Assembly. The learned Advocate maintained that no

particular form or procedure is provided in the Interim Constitution Act, 1974 or in the Rules of Procedure of Azad Jammu & Kashmir Legislative Assembly for acceptance or rejection of a resignation rather a member has simply to inform the Speaker about his resignation through notice and Speaker has to accept the same because nobody can be compelled to continue to remain as member for full tenure. The learned Advocate stated that the Speaker has rightly communicated the acceptance of the resignations to the Chief Election Commissioner for further proceedings in the terms of section 25(4) of the Interim Constitution Act, 1974.

We have heard the learned counsel for the parties and gone through the record of the case as well as case law cited by the learned counsel for the parties. Section 25 of the Interim Constitution Act, 1974 deals with the eventualities under which a seat of a member of the Legislative Assembly becomes vacant, which reads as under:-

“25. Seat in Assembly becomes vacant under certain circumstances.

(1) The seat of a member of the Assembly shall become vacant if—

(a) he resigns his seat by notice in writing under his hand addressed to the Speaker, in his absence, to the Secretary of the Assembly; or

(b) ----- ”

Under the above provision of law the seat of a member shall become vacant if he resigns by notice in writing under his hand addressed to the Speaker, in his absence, to the Secretary of the Assembly. Sub-rule (1) of Rule 29 of Rules of Procedure of the Azad Jammu & Kashmir Legislative Assembly provides that after

acceptance of the resignation of the member of the Legislative Assembly the Speaker when Assembly is in session shall inform it, however, when it is not in session the Speaker shall inform the Assembly in the next session that such a member has resigned from the seat of the Assembly. Sub-rule (2) says that resignation shall be notified in the official Gazette and the Chief Election Commissioner shall also be informed for filling the vacant seat in the terms of Sub-section (3) of Section 25. It may be stated that the moment resignation is tendered by a member of Assembly it operates forthwith without any formal order of acceptance by the Speaker. Ordinarily, a member of the Assembly once elected is entitled to continue as such for full tenure of five years fixed by Section 22(3) of the Interim Constitution Act, 1974 or until the Assembly is dissolved in accordance with the provision of the Constitution or member is disqualified to hold the membership of the Assembly due to any disqualification or eventuality enumerated in the Constitution but he has a right to resign at any time without disclosing any reason. In a case titled *Vikram Singh v. Shri Ram Ballabhji Kasat and others* (AIR 1995 Madhya Pradesh 140) it has been held that an elected member has right to resign and the reasons for resignation, cannot be subjected to the scrutiny of the Speaker or other authority. In the same case it had further been held that when Speaker, after being satisfied, sends notice of resignation to Chief Election Commissioner and mere failure to write the words "accepted" on the resignation/notice is not a ground to declare resignation as invalid. It is in our notice that for the first time in the history of Pakistan the parliament of Pakistan has completed its

constitutional tenure. Prior to that neither the elected Governments nor the parliaments have been allowed to complete their constitutional tenure. Political dignities have been adopting different tactics for coming into power. Some time members of the parliament have been forcibly abducted and made hostage for the purpose of horse-trading etc. The political leadership in the name of political stability used to obtain their resignations before their nomination as a nominee of the party so that the same can be used when feel threatened. In order to avoid such immoral tactics and coercive manners a change has been brought in the Constitution and the Rules of Procedure regarding the business of parliament in Pakistan and India. A specific procedure is provided in these rules for tendering the resignation by a member of the Parliament and the manner in which such resignation is to be accepted by Speaker in view of the various judicial pronouncements. The Rules of Procedure of the Azad Jammu & Kashmir Legislative Assembly do not provide any specific mode of tendering of resignation and the manners in which it is to be accepted. As stated above in Pakistan the Rules of Procedure and Conduct of Business of the National Assembly, 2007 have been framed under clause 1 of Article 67 of the Constitution of the Islamic Republic of Pakistan. Rule 43 of the said rules deals with the resignation of a member of the parliament, which reads as under:-

- “43. Resignation of Seat.—**(1) A member under clause (1) of Article 64 may, by writing under his hand addressed to the Speaker, resign his seat.
- (2) if,—
- (a) a member hands over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the

Speaker has no information of knowledge to the contrary; or

- (b) the Speaker receives the letter of resignation by any other means and he, after such inquiry as he thinks fit, either himself or through the National Assembly Secretariat or through any other agency, is satisfied that the resignation is voluntary and genuine, the Speaker shall inform the Assembly of the resignation;

Provided that if a member resigns his seat, when the Assembly is not in session, the Speaker shall direct that intimation of his resignation specifying the date of the resignation be given to every member immediately.

- (3) The Secretary shall, after Speaker satisfies himself that the letter of resignation is voluntary and genuine, cause to be published in the Gazette a notification to the effect that the member has resigned his seat and forward a copy of the notification to the Chief Election Commissioner for taking steps to fill the vacancy thus caused.”

A perusal of the above reveals that a complete mechanism is provided for receipt of the resignation and the mode of its acceptance. It is desired that rule 29 of the Rules of Procedure of the AJ&K Legislative Assembly may be amended on the same line as has been done in Pakistan in order to avoid any complicity in future.

In the case in hand the Speaker of the Legislative Assembly has received resignations of the petitioners on 23.07.2013. The language of these resignations almost is the same therefore, it would be sufficient to reproduce only one of those for ready reference as under:-

جناب سپیکر آریجوہوں و کشمیر مظفر آباد

میں چوہدری محمد رشید ولد محبوب اپنے ہوش و حواس کے ساتھ یہ اختیار جناب آصف علی زرداری شریک چیزمین کو دیتا ہوں کہ وہ جب مناسب سمجھیں میرا استعفیٰ میری ممبر شپ سیٹ LA-29 MZD-6 جو کہ جناب عالی قانون ساز اسمبلی میں ارسال فرما سکتے ہیں۔ یہ اختیارات جو کہ میں اپنے شریک چیزمین کو دے رہا ہوں ناقابل تردید ہیں اور جناب عالی جب میرا استعفیٰ قبول کریں اس پر فوری عملدرآمد کے لیے احکامات جاری کر سکتے ہیں۔

شکریہ

آپ کا مخلص

چوہدری محمد رشید ولد محبوب

The letter dated 23.07.2013 sent to the Chief Election Commissioner by Speaker whereby he has accepted the resignations and declared the seats of the MLAs mentioned therein under Sub-section (1)(a) of Section 25 of the AJ&K Interim Constitution Act, 1974 vacant is also reproduced as under for proper appreciation of the controversy:-

نمبر 2013/اسمبلی/129-30 P/S

تاریخ 23.07.2013

آج مورخہ 23 جولائی 2013 دن ایک بجے درج ذیل ممبران اسمبلی

۱- عبدالمجاہد خان ممبر قانون ساز اسمبلی 6 LA-4/Valley

۲- سردار اختر حسین ربانی ممبر قانون ساز اسمبلی LA-22 Sadhnoti

۳- چوہدری ارشد حسین ممبر قانون ساز اسمبلی LA-4 Mirpur

کے استعفیے پیش ہوئے۔ مطابقتاً منظور کیے جاتے ہیں۔ عبوری آئین کی دفعہ 25 ذیلی دفعہ 1-(A) کے تحت درج بالا ممبران اسمبلی کی رکنیت سے محروم ہو چکے ہیں اور یہ نشست باخالی ہو چکی ہیں۔

سپیکر

جناب چیف الیکشن کمشنر

آزاد جموں و کشمیر۔

نقل بالا بخد مت۔

۱- عبدالمجاہد خان ممبر قانون ساز اسمبلی 6 LA-4/Valley

۲- سردار اختر حسین ربانی ممبر قانون ساز اسمبلی LA-22 Sadhnoti

۳- چوہدری ارشد حسین ممبر قانون ساز اسمبلی LA-4 Mirpur

۴- سیکرٹری آزاد جموں و کشمیر قانون ساز اسمبلی۔

سپیکر

قانون ساز اسمبلی

From perusal of the above it becomes crystal clear that the petitioners have not presented their resignations personally to the Speaker of the Legislative Assembly. It is also not stated in the letter

that who presented these resignations on behalf of the petitioners and others who have allegedly given the authority for pressing their resignations from the seats of Legislative Assembly to the Co-Chairman of Pakistan People Party. However, annexure 'RF' appended with the written statement reveals that on the same date the Speaker after receiving the resignations of the petitioners has verified their signatures from the record of Legislative Assembly and after being satisfied has accepted their resignations. In our considered view the course adopted by Speaker Legislative Assembly in the circumstances of this case was not appreciable and reasonable. It was enjoined upon the Speaker to inquire personally from the members who have resigned because admittedly, a day before the tendering of alleged resignations, a resolution for a vote of no confidence against the Prime Minister under Section 18 of the Interim Constitution Act, 1974 was moved by petitioners No.1 and 9, herein. In such circumstances the responsibility of the Speaker becomes double because after moving resolution for a vote of no confidence it is not believable that the members of the Legislative Assembly, who have moved resolution for a vote of no confidence against the Prime Minister could resign from seats of the Legislative Assembly. In our view the Speaker has failed to perform his duties and role assigned to him under the Constitution and law in a fair, transparent and judicious manner. In Parliamentary Procedure by Subhash C. Kashyap, at page 86, the role of the Speaker has been stated as under:-

“Independence and impartiality are the two important attributes of the office of the Speaker. His conduct cannot be discussed except on a substantive motion. He does not vote in the House

except when there is an equality of votes. And, when he gives his casting vote in the event of a tie, it is always in accordance with well-established parliamentary principles and conventions. Incidentally, so far there has not been a single instance in India since independence, when the Speaker was required to make use of his casting vote. The Speaker is politically neutral. Upon his election as Speaker, he dissociates himself from the activities of his party. While he may continue to belong to a party, he ceases to be involved in any party politics. He does not hold any party office, does not participate in any party meetings or functions and keeps away from political controversies and party campaigns.”

Again at page 106 it has been observed as under:-

“The Speaker has the power to deal with all matters which are not specifically or adequately provided for in the Rules. All questions relating to the detailed working of the Rules are also regulated by the Speaker. In exercise of these powers the Speaker has issued directions from time to time, which have been compiled and issued as directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha. Further, the Speaker gives ruling on the specific matter or issues which arise from the time to time.

The Speaker has also certain inherent powers, under which he may, in certain special cases, allow motions to be moved or withdrawn which are not covered by the rules of procedure, may order expunction of words from the proceedings of the House on any ground not provided for in the rule relating to expunction, and revise or correct a decision given by him earlier.”

In view of above it can safely be concluded that role of Speaker is not like a Postman rather he is custodian of the house and in that capacity on being informed that a member has resigned he was under obligation to hold an inquiry for ascertaining the true position regardless of his party affiliation and should have applied his independent mind notwithstanding the fact that the Rules of Procedure

of Azad Jammu & Kashmir Legislative Assembly are silent and are not clear.

We have also noticed that a reference under Section 25(2) against Muhammad Hussain Sargala, petitioner No.9 herein, was filed before the Speaker of the Legislative Assembly which remained pending for pretty long period and the same was sent along with the resignations to the learned Chief Election Commissioner without providing the right of hearing and forming the opinion that the said member of the Legislative Assembly stands disqualified in the terms of section 25(2) of the Interim Constitution Act, 1974. The reference admittedly has been received by the Chief Election Commissioner who is the sole prerogative and authority to decide the question of defection, therefore, we abstain from commenting upon the action of the Speaker to this extent. However, in the peculiar circumstances of the case we observe that it was enjoined upon the Speaker even to provide a right of hearing to Muhammad Hussain Sargala, petitioner before sending his case to the learned Chief Election Commissioner. We now proceed to examine the case law relied upon by the learned Advocates. Firstly we will take Tahir Beg's case (PLD 1976 S.C. 504). In that case the resignation though was addressed to the Speaker but was handed over by the Provincial head of the Pakistan People Party to the Speaker which was written and signed by Mirza Tahir Beg, petitioner therein and also bore the same date. The Speaker after receiving the resignation informed the Chief Election Commissioner for further proceedings. Subsequently the resignation was refuted by him but even then Speaker did take any

step. The apex Court disapproved the action of the Speaker and at page 512 of the report the Court pleased to observe as under:-

“Needless to say that the Speaker in a parliamentary form of Government holds an office of highest distinction and has the sole responsibility cast on him of maintaining the prestige and the dignity of the House and each and every member composing the House. It is precisely for this reason that the Constitution has ordained that a resignation by a member is effective only when it is “addressed” to the Speaker: it was not intended to be an idle formality. To relinquish a parliamentary seat by resignation is a grave and a solemn act. By and large our political institutions are fashioned on the pattern of those obtaining in England and it is a settled principle of Parliamentary law in England that a member of Parliament after he is duly chosen, cannot relinquish his seat by unilaterally resigning his membership. In order to evade this restriction a member who wishes to relinquish his seat, accepts office under the Crown which legally vacates his seat. This is enough to underline the gravity of the matter. (see May’s Parliamentary Practice, 18th Edn., P.45).”

Again at page 514 of the report it was observed as under:-

“On the above analysis therefore, I have no doubt in my mind that Speaker had the right and duty under the constitution to satisfy himself as to the genuineness and the validity of the resignation by a member, before it is allowed to take effect. As a necessary corollary of that, the Speaker will have to make proper enquiry, if there appears anything tending to create any doubt with regard thereto. What will be the magnitude of the enquiry or whether, in a particular case, any such enquiry will at all be necessary, will depend on the facts of each case and it is not possible nor even desirable to lay down a criterion for general application. For example, if in the instant case, the appellant had himself appeared and presented his resignation to the Speaker and there was nothing to show that it was involuntary, then there is hardly any need for an enquiry. If on the other hand the resignation is

not presented personally, but is sent through a messenger, as in the instant case, then speaker will have to further satisfy himself that the transmission is by an authorized person. If for instance, a resignation, otherwise complete, but is stolen from the drawer of the member by another person who actually presents it to the Speaker, it will not be ineffective for the purpose of Article 64. In the case of Syed Shah Nawaz noticed already, one of the defects which had rendered the resignation ineffective was that the then President who actually transmitted the resignation to the Speaker had no authority from Syed Shah Nawaz to do so.”

In Mian Nawaz Sharif’s case the principle laid down in Mirza Tahir Beg’s case was reiterated and followed however it was observed that it is necessary that resignation should be volunteer and genuine and should be intended to vacate the seat. It was further held that resignation would not only be addressed to the Speaker but it should be intended to be delivered to the Speaker. It was observed that Speaker in parliamentary form of Government holds office of highest distinction and sole responsibility passed on him to maintain prestige and dignity of the house and each and every member composing the house. It was further held that a resignation by a member of the Parliament is effective only when it is addressed to the Speaker who has been assigned pivotal role in the Constitution.

In Abdul Razique Khan’s case the apex Court reiterated the same view and at page 84 observed as under:-

“The Courts and all statutory authorities and functionaries in Pakistan have an abiding duty to protect and ensure, wherever possible, whenever within their power and jurisdiction, the purity and the efficacy, and to lend strength and vigour to democracy, democratic process and the democratic values. In our country, very unfortunate though it is, mutilation of democracy has been taking place

at almost every step, at almost every level. It started, very crudely indeed, with the physical obstruction, removal and kidnapping of rivals in order to achieve and uncontested access to representative office. It then when beyond the practice of obtaining long beforehand resignations from all the legal members of a political party as a proof of their implicit faith in their leader. Next came the stage when resignations expressed to be resignations and satisfying visually all the requirements of a resignation came to be utilized for all purposes, except that of operating as resignations.”

Again at page 85 of the report in para 9 following observation was made by the apex Court of Pakistan:-

“The comments reproduced from the written statement of the Acting Speaker clearly show that the inquiry which was anticipated and which was withholding action on the resignations already submitted was with regard to determination whether these resignations were voluntary or genuine. Just by comparing the signatures and holding it to be of the appellant, it could not be deduced that the resignations were voluntary and genuine in the sense of being intended to be resignations. Therefore, the inquiry which was required, which was anticipated, which had in any case to take place under the law never took place at the hands of the acting Speaker. Anybody receiving the resignation has a duty to ascertain personally whether it is signed by the man resigning, whether it is voluntary and whether it is intended to act as a resignation. Unless all the three requirements of the resignation are satisfied it is dangerous in the political milieu in which we are living to give effect to such resignations. Mere prolonged absence of the person resigning, his non-appearance after notice or his absence from the proceedings even after notice could not prove these requirements. Unless these are positively proved, the resignations cannot be given effect to as resignations. The Rules of Procedure drawn up by the National Assembly in the matter of dealing with resignations are fairly exhaustive and consistent with the law laid down by the Supreme Court of Pakistan in the cases of Mr. A.K.Fazalul Quader Chaudhury PLD 1966 SC 105 and Mirza

Tahir Beg PLD 1976 SC 504. The Provincial Assembly Procedure Rules have so far no provision on the subject.”

In Munawar Khan’s case supra a Division Bench of Peshawar High Court after considering the earlier case law on the subject at page 2076 observed as under:-

“In a case of this nature, the authority of our own Supreme Court reported in PLD 1966 SC 105 (A.K.Fazlul Quader Chaudhury v. Syed Shah Nawaz etc.) would appear to be more good and surpassing in support of the proposition that before forming any final opinion on the resignation of a member, the Speaker is bound to consider all the relevant documents to arrive at a conclusion whether the resignation is actual and voluntary.”

In Muhammad Naem Akhtar’s case it was observed that where Speaker has doubt about the genuineness and voluntary nature of the resignation received by him or is informed by concerned member or on his behalf that resignation is not genuine or has not been given voluntarily the Speaker is required to hold an inquiry to satisfy himself regarding genuineness or voluntary nature of the resignation.

In Syed Qaim Ali Shah’s case (1993 MLD 1127) a learned Division Bench of Karachi High Court while placing reliance on Tahir Beg’s case supra opined that where genuineness and voluntarily nature of the resignation is challenged and ex-facie doubtful, Speaker is duty bound to inquire into the matter before acceptance of the same.

So far as the case in hand is concerned the resignations submitted to the Speaker as per admitted record have not been presented by the petitioners themselves and Speaker has also not hold

an inquiry about the genuineness and voluntarily nature of the resignations. Moreover, resignations did not bear any date. It appears that resignations have been obtained from the candidates before issuance of party tickets to them. Notwithstanding the language employed in the resignations, we are of the view that powers could not be delegated which in fact were not available to the petitioners at the time of execution of the resignations. Neither the Constitution nor the Rules of Procedure of Azad Jammu & Kashmir Legislative Assembly recognize such type of practice.

After going through the precedents referred to hereinabove and the Rules of Procedure of parliament of Pakistan it appears that when resignation of a member of the National Assembly is received by Speaker notwithstanding any specific procedure, it is enjoined upon him to ensure before acceptance of the resignations that following conditions have been fulfilled:-

- (i) The resignation is in writing under his hand and has been addressed to the Speaker;
- (ii) The resignation has been delivered by the member personally or through any other means;
- (iii) If the letter of resignation is delivered personally, then the Member should inform the Speaker that the resignation is voluntary and genuine;
- (iv) If the resignation is delivered by any other means, then the Speaker shall make inquiry into the genuineness of the resignation and ascertain whether it is voluntary or not.
- (v) The Speaker after being satisfied that the resignation is genuine and voluntary, shall inform the Legislative Assembly and then the seat shall be declared vacant;
- (vi) The date of resignation of a member shall be the same as specified in the letter of

resignation or if no date has been given, then the date of its receipt by the Speaker.”

The aforesaid requirements have been approved and recognized by the Superior Courts from time to time.

The next question which needs resolution is as to whether the Speaker was duty bound to summon the meeting of the Assembly after receiving the resolution for a vote of no confidence or the meeting was to be summoned by the President? So far as the meeting of Assembly is concerned it may be stated that under section 27 of the Interim Constitution Act, 1974 “the Assembly shall assemble at such time and at such places as the President may appoint; and the President may prorogue a session of the Assembly except when the Assembly has been summoned by the Speaker.” Under sub-section (3) of section 27 it is commanded that there shall be four sessions of the Assembly every year and three months shall not intervene between the first sitting of the Assembly in one session and its first sitting in the next session. The second eventuality is provided under sub-section (4) of section 27 where the Speaker has to summon meeting of the Assembly if not less than one-fourth of the total membership of the Assembly move to the Speaker within fourteen days of the receipt of the requisition. In that case the Speaker is empowered to prorogue the sessions. So far as the summoning of the session by the President is concerned, it is only on the advice of the Government as is visualized by section 7 of the Interim Constitution Act, 1974 and Rules of Business. The President has no independent powers to summon the session at his own or on the move of the Speaker without advice of the

Government in view of the constitutional command enumerated in Section 7 which reads as under:

- “7. **President to act on advice, etc.—**(1) Subject to an express provision to the contrary in this Act, in the performance of his functions, the President shall act on and in accordance with the advice of the Prime Minister and such advice shall be binding on him.
- (2) The question whether any, and if so what advice was tendered to the President by the Prime Minister shall not be enquired into any Court.”

The contention of Mr. Abdul Rasheed Abbasi, learned Advocate that it is the President who has to summon the session even for the purpose of section 18 of the Interim Constitution Act, 1974 has no substance. The learned counsel based his submission on Rule 17 of the Rules of Procedure of Azad Jammu & Kashmir Legislative Assembly, which is reproduced as under:-

- ”وزیراعظم کے خلاف عدم اعتماد کے لیے قرارداد:-
- (۱) کوئی بھی رکن وزیراعظم کی برطرفی کے لیے ایکٹ کی دفعہ ۱۸ کے تحت سیکرٹری کو قرارداد پیش کرنے کا نوٹس دے سکتا ہے اور سیکرٹری جتنا جلد ممکن ہوگا اس کی ایک نقل صدر کو ارسال کرے گا اور بجلت ممکنہ ارکان میں نوٹس متداول (Circulate) کرائے گا۔
- (۲) تہمتی تادمہ (۱) کے تحت جس قرارداد کا نوٹس دیا گیا ہو اس کو سیکرٹری متعلقہ رکن کے نام سے ایسا نوٹس موصول ہونے کی تاریخ سے تین دن گزرنے کے بعد سات دن گزرنے سے قبل فہرست کارروائی میں شامل کرے گا۔ قرارداد پیش کرنے سے قبل کوئی دیگر کارروائی نہیں ہوگی۔
- (۳)
- (۴) قرارداد کے پیش کیے جانے کے بعد کسی بھی وقت سپیکر مجاز ہوگا کہ وہ ایکٹ کی دفعہ ۱۸ کے تابع قراردادوں پر رائے شماری کرانے کے لیے کوئی دن مقرر کرے اور اس مقرر شدہ دن کو اسمبلی کا اجلاس اس وقت تک ملتوی نہیں کیا جائے گا جب تک کہ قرارداد مذکور پر رائے شماری نہ ہو جائے۔
- (۵) سپیکر جتنا جلد ممکن ہو قرارداد کے بارے میں اسمبلی کے فیصلے سے صدر کو مطلع کرے گا۔“

A perusal of the above rule will show that after receiving the resolution for a vote of no confidence the Secretary has to inform

the President by sending a copy of the resolution to him. The Secretary is further bound to circulate the notice among members of the Legislative Assembly. Under sub-rule (4) of Rule 17 it is stated that the Speaker is bound to fix a date for voting on the resolution for a vote of no confidence. It is, therefore, implied that it is the Speaker who has to summon the session of the Assembly notwithstanding the fact that resolution for a vote of no confidence is signed by one-fourth of the total membership of the Legislative Assembly. It has already been stated that Rules of Procedure have been amended in Pakistan and India. The rules regulating the procedure of the Legislative Assembly of Azad Jammu & Kashmir are required to be amended in order to meet the situation and to get rid of any difficulty in future. Even otherwise the Speaker has inherent powers to meet a situation which is not expressly provided in the Constitution and the Rules of Procedure. The learned Advocates for the respondents have relied upon the previous practice and referred to and relied upon the previous motions which have been moved under signatures of one-fourth of total membership. In our view this practice cannot be accepted because no such embargo is placed by the Constitution on the move of the members for a vote of no confidence.

Before parting with the case we may observe that floor-crossing by members of parliamentary parties had come to be so menacingly engrained in the political system that shifting of loyalties by members had become a matter of common occurrence. The same can be prevented/controlled only by appropriate enactment otherwise the right to move a resolution for a vote of no confidence of a

member cannot be curtailed. The same view has been taken in a case titled *Wukala Mahaz Barai Tahafaz Dastor v. Federation of Pakistan* (PLD 1998 SC 1263). In the Constitution of the Islamic Republic of Pakistan article 63-A has been incorporated through (Eighteenth amendment) Act, 2010 from getting rid of floor-crossing. The similar provision is required to be incorporated in section 24(2) of the Interim Constitution Act, 1974.

The upshot of the above is that the resignations allegedly tendered on behalf of the petitioners and accepted by the Speaker have not been tendered by the petitioners and their resignations cannot be construed as resignations contemplated by section 25(1)(a) of the Interim Constitution Act, 1974. Resultantly the orders of the Speaker dated 23.07.2013 and 24.07.2013 whereby after accepting the resignations seats of the petitioners have been declared vacant are hereby declared without lawful authority and of no legal consequences. So far as the other relief is concerned as the resolution for a vote of no confidence is not pending with the Assembly and has been withdrawn, therefore, no direction to the extent of summoning session of the Assembly is required. To that extent the petition stands disposed of in light of the statement of Mr. Sadaqat Hussain Raja, the learned Advocate for of the petitioners, which has also been endorsed by Raja Muhammad Hanif Khan, Advocate in the open Court.

Muzaffarabad,

16th August 2013.

CHIEF JUSTICE

JUDGE

JUDGE

(A)

(S)

JUDGE

JUDGE

JUDGE

(H)

(J)

(B)