

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

Kh. Muhammad Nasim, J.

1. Civil Misc. No. 154 of 2022
(Filed on 14.06.2022)

Azad Govt. & 4 others

.... PETITIONERS

VERSUS

Sardar Muhammad Javed Ayub & 33 others

.... RESPONDENTS

(Application for interim relief)

FOR THE PETITIONERS: Raja Mazhar Waheed
Khan, Additional
Advocate General.

FOR THE RESPONDENTS: Ch. Shoukat Aziz and Mr.
M. Pervaiz Mughal,
Advocates.

2. Civil Misc. No. 155 of 2022
(Filed on 14.06.2022)

Kh. Muhammad Maqbool War

.... PETITIONER

VERSUS

Sardar Muhammad Javed Ayub & 9 others

.... RESPONDENTS

(Application for interim relief)

FOR THE PETITIONER: M. Tabassum Aftab Alvi,
Advocate.

FOR THE RESPONDENTS: Nemo.

Date of hearing: 14.06.2022

ORDER:

Kh. Muhammad Nasim, J.— These applications under Order VI, Rules 1 & 2 of the Azad Jammu and Kashmir Supreme Court Rules, 1978 for ad-interim ex-parte relief have been placed before the Court during pendency of petitions for leave to appeal pending completion in the registry office.

2. According to the facts of the case, nine writ petitions in relation to Development Schemes of Local Government Department were filed before the High Court. During the proceedings in the said writ petitions, on 10.06.2022, following order was passed:-

“This case was called at 9:30 AM in view of acts of the respondents in violation of stay order issued by this Court, the Advocate General was directed to inform and produce Chief Secretary before the Court at 10:30 AM. At 10:30 AM the case has been called again, the Chief Secretary did not appear and Advocate General apprised

the Court that Chief Secretary has deputed Additional Chief Secretary to appear on his behalf. The Advocate General was again ordered to produce the Chief Secretary whereupon he refused to obey the order and stated that he does not want to argue the case. The conduct of the Advocate General is highly regrettable, contemptuous and tantamount to degrade the prestige of the Court which cannot be ignored in any stretch of imagination so he is relieved from his job and the concerned authority is directed to issue notification in this regard and for said reason his license of Advocacy is hereby suspended till further orders and copy of this order shall be sent to Chief Executive of the Azad Jammu and Kashmir for intimation and further action. Notice shall be issued to Chief Secretary of State of Jammu and Kashmir to appear before the Court at 11:15 AM today. The office shall ensure the service of summon upon the Chief Secretary. To come up at 11:15 AM.”

This order of the High Court has been assailed before this Court by filing two petitions for leave to appeal, which are awaiting completion in the registry office. Meanwhile, the instant applications for suspension of the impugned order of the High Court have been placed before the Court. As identical legal and factual propositions are involved, hence, both the applications are clubbed and decided simultaneously.

3. Raja Mazhar Waheed Khan, the learned Additional Advocate General, while addressing the Court,

submitted that the impugned order passed by the High Court is not in accordance with law. He submitted that on the date fixed, the Advocate General was directed to produce the Chief Secretary. While obeying the order of the Court, the learned Advocate General informed the Chief Secretary to appear before the Court. The newly appointed Chief Secretary was not aware of the facts of the case pending before the High Court. He was taking brief on the issue and meanwhile the Additional Chief Secretary was deputed to appear in the Court. Later on, the Chief Secretary also appeared before the Court, hence, the Advocate General has never disobeyed the order of the Court. The impugned order passed by the High Court is, therefore, against law and liable to be suspended.

4. Mr. M. Tabassum Aftab Alvi, Advocate, the learned counsel appearing on behalf of the petitioner (Kh. Muhammad Maqbool War), submitted that on 10.06.2022, the petitioner was busy before this Court, whereas, the Addl. Advocate General and Assistant Advocate General were deputed to appear before the High Court. At 10:30 a.m. on the information of Addl. Advocate General, the petitioner

appeared before the High Court. The learned High Court directed the petitioner to produce the Chief Secretary before the Court. The petitioner conveyed the Chief Secretary to appear before the Court but without any legal justification, the impugned order has been passed by the High Court. He submitted that impugned order is based upon two reasons: (i) that the petitioner refused to obey the order of the Court and argue the case; and (ii) that the conduct of the petitioner (Advocate General) was contemptuous. So far as the first reason is, concerned, it is against the facts of the case. In fact, the petitioner while obeying the order of the Court conveyed the Chief Secretary to appear before the High Court. So far as the second reason that the conduct of the Advocate General is contemptuous, is concerned, the petitioner has not committed any contempt of the Court. Even otherwise, in this regard, a specific procedure is provided under the Contempt of Courts Act, 1993 which includes the framing of charge, providing list of allegations and the right of hearing, but in the instant case the procedure provided under the law has not been adopted. From this angle, the impugned order of the High Court is not

sustainable. He further added that under Article 20 of the Interim Constitution, 1974 the Advocate General is appointed by the Worthy President, hence, the learned High Court was not empowered to relieve the petitioner of the office of Advocate General. The impugned order passed by the High Court is, therefore, coram-non-judice. He referred to and relied upon the case reported as *Muhammad Rashid vs. Azad Jammu and Kashmir Govt. & others* [PLD 1987 SC(AJ&K) 60].

5. Ch. Shoukat Aziz, Advocate, accompanied by Mr. Muhammad Pervaiz Mughal, Advocate, filed caveat on behalf of the respondents in the petition for leave to appeal filed by the Government and submitted that the petition is liable to be dismissed on account of violation of mandatory provisions of Order XIII, Rule 3 of the Azad Jammu and Kashmir Supreme Court Rules, 1978. In this regard, the case reported as *Azad Govt. & others vs. Muhammad Ishaq Khan & others* [2019 SCR 383] has been referred. It was further argued that the Government is not aggrieved at all, hence, the Government has no locus standi to challenge the

impugned order. The petition for leave to appeal filed by the Government is, therefore, liable to be dismissed.

After hearing the learned counsel for the parties at some length, it is appropriate to take up these applications along with petitions for leave to appeal. Taking into consideration the arguments advanced at bar and the affidavits filed by the petitioners, I am of the view that all the three essential ingredients governing the interim injunction i.e., prima facie arguable case, balance of convenience and irreparable loss; exist in the instant case, hence, it is ordered that the impugned order passed by the High Court dated 10.06.2022 shall remain suspended, till next date of hearing.

As important legal propositions are involved in this case, hence, constitution of larger bench is felt advised. The Hon'ble Chief Justice is holding sittings at circuit, Mirpur. The office is directed to immediately transmit the record to circuit, Mirpur to be placed before the Hon'ble Chief Justice on 20th instant for constitution of larger bench and proper order.

Muzaffarabad,
14.06.2022

JUDGE