



PROVINCIAL ASSEMBLY OF THE PUNJAB

RULING OF THE CHAIR

IN RESPECT OF POINT OF ORDER RAISED BY MR AFTAB AHMAD KHAN, MPA (PP-108) REGARDING THE FINANCIAL POWER OF ASSEMBLY OVER THE EXECUTIVE WITH PARTICULAR REFERENCE TO PERKS AND PRIVILEGES OF MEMBERS OF ASSEMBLY

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Facts of the Point of Order

On Wednesday June 26, 2024, Rana Aftab Ahmad Khan, MPA (PP-108) raised a point of order seeking guidance from the Speaker about financial autonomy of the Assembly with particular reference to the matter of perks and privileges of the Members of Assembly. He questioned the authority of the Government in determining the salaries and allowances of Members of Assembly. He was of the view that Speaker, as custodian of the House, should be empowered to determine perks and privileges of the Members of Assembly. Other members including Mr. Sami ullah Khan, Mr. Shaukat Raja, MPA, Ms. Uzma Kardar and Mr. Ahmer Bhatti endorsed the point of view of Rana Aftab Ahmad Khan. I had reserved my ruling on the point to give due consideration to the matter. Having consulted the relevant provisions of the Constitution and the existing laws, I hereby rule as under:

Ruling

I. Background

The point of order raised by the member of the House requires crucial consideration as the issue of separation of powers is at play. Briefly, in the Constitutional Scheme, the control over the “purse” or finances of the province are supposed to lie with the Assembly. This is encapsulated as the “financial autonomy” of the Assembly. This includes finances relating to salaries and allowances of members of the Assembly.

In the present case, the Assembly has codified this power in line with the Constitutional requirements, and has linked the power of increase in salaries and allowances of members of the Assembly, with the increase in salaries of civil servants by the Government. The Government, however, has not implemented it to the extent of the

members of the Assembly, thereby the issue at hand, i.e., the executive has handicapped the legislature.

Separation of powers is a model of democracy that involves the distribution of power among the three pillars of a state, namely, the executive, the legislature and the judiciary. In a system where there is a separation of powers. The doctrine of separation of powers is also embodied in the Constitution of Pakistan. The first two organs, i.e., the executive and the legislature are mentioned in Article 7 of the Constitution; while the third finds its role in Part VII of the Constitution. In separation of powers, each branch enjoys a considerable degree of independence from the other branches. Let me attempt to explore and establish the constitutionalism of financial autonomy and budgetary independence of the legislature on the touchstone of the ageless constitutional values regarding the concept of separation of powers between the three organs of the state. All these organs have been envisioned by the Constitution to be independent of one another with regard to their administrative and financial affairs.

II. Relevant Legal and Constitutional Provisions

So far as the approval of the budget by the legislature is concerned, we find distinctive features of a legislature, i.e. Article 121 of the Constitution classifies the ***expenditure charged upon the Provincial Consolidated Fund*** that includes the administrative expenses of Secretariat of Provincial Assembly and remuneration payable to Speaker and Deputy Speaker and the officers and servants of the Secretariat of the Provincial Assembly.

Subsequent Article 122 speaks of the sanctity of expenditure ***charged upon*** the Provincial Consolidated Fund as under:

“122. Procedure relating to Annual Budget Statement.- (1) So much of the Annual Budget Statement as relates to expenditure charged upon the Provincial Consolidated Fund may be discussed in, but shall not be submitted to the vote of, the Provincial Assembly.”

To further clarify the scope of Article 121, it is pertinent to point out that the budget of the Assembly comprises three components, namely:

- (i) remuneration payable to the Speaker and Deputy Speaker;
- (ii) the administrative expenses of the Secretariat of the Provincial Assembly; and
- (iii) perks and privileges payable to the Members of the Assembly.

The first two components are charged upon the consolidated fund while the third component requires approval of the Assembly (i.e. to be voted by the Assembly).

III. Parliamentary Primacy and Financial Autonomy of the Assembly

Coming to the matter of perks and privileges of the Members of Assembly, let me draw your attention to Article 250 of the Constitution which says:

“250. Salaries, allowances, etc., of the President etc.- (1) Within two years from the commencing day, provision shall be made by law for determining the salaries, allowances and privileges of the President, the Speaker and Deputy Speaker and a member of the National Assembly or a Provincial Assembly, the

Chairman and Deputy Chairman and a member of the Senate, the Prime Minister, a Federal Minister, a Minister of State, a Chief Minister, a Provincial Minister and the Chief Election Commissioner.”

Meaning thereby, the Constitution gave the right of determination of perks and privileges as well as allowances of the Members of the Assembly to the Assembly itself. All the legislatures, including Punjab Assembly, are following this Constitutional principle for the salaries and allowances of their Members.

Pursuant to this Article, the Punjab Assembly passed an Act titled “*The Punjab Provincial Assembly (Salaries, Allowances and Privileges of Members) Act 1974*” which determined the salary, allowance etc of the Members of Punjab Assembly. Every time a revision in their perks was needed, this law was required to be amended by the Assembly. In order to remove this hurdle, and following the footsteps of National Assembly, section 3 of the said Act was amended by the Punjab Assembly in the year 2006, and the following provision was inserted in it:

“The salary shall automatically be increased by the Government in proportion to the increase in the salary of the civil servants.”

However, despite this amendment, the benefit of increase in the salaries of civil servants was not extended to the public representatives. In the year 2016, the said law was again amended by the Punjab Assembly in 2016 and as under:

“(4) The Government shall, by notification, increase the salary mentioned in subsection (1) in proportion to the increase in the salary of the civil servants of the highest grade.

Explanation.– The word “salary” in subsection (4) shall include any ad hoc relief or special allowance provided to the civil servants of highest grade, having the effect of increase in the basic pay of the civil servants.”

IV. Violation of Principles of Parliamentary Primacy, Autonomy, and Supremacy

To the height of disregard to the power of the legislature over the purse, the decision of Assembly was never implemented. It is pertinent to note here that in an attempt to streamline the process, the legislature had linked the power of increase in the salaries of members of the Assembly to the executive, tying it in with the increase in salaries of the civil servants by the Government. The same has not been implemented, as the past has seen an increase in the salaries, allowances, perks and privileges of the civil servants, but the same has not been implemented by the Legislature to the extent of members of the Assembly. It is the bounden duty of the executive to do so. The blatant disregard of the will of the legislature and the non-implementation of law by the executive is extremely concerning, and proves a glaring violation of the principles of parliamentary supremacy and principles of good and effective governance.

It is also crucial to note here, that the power to determine salaries, allowances, perks and privileges of members is still a power that is vested in the legislature. It is only linked to the Government’s increase in salaries of civil servants for ease of governance

and for providing an easily workable formula. However, the same has not been implemented by the executive as the legislature willed.

Conclusion

Now, coming to the point of order raised by Rana Aftab Ahmad Khan, MPA, it has been established that it is the constitutional mandate of legislature to determine the perks and privileges of its Members and no other individual or body including the Speaker can interfere into this matter.

As a settled principle of 'trichotomy of power', the executive has to implement the laws made by the legislature, which in the instant case, seems that the executive is evading its implementation and have effectively handicapped the legislature, which is highly objectionable and is tantamount to challenge the authority of legislature and absolutely unacceptable.

With the aforementioned reasoning, the point of order raised by hon'ble Rana Aftab Ahmad Khan, MPA (PP-108) is ruled in order to the extent that the executive shall implement the above-mentioned statutory provision in letter and spirit. A copy of this ruling be sent to the Government for compliance.

(Malik Muhammad Ahmad Khan)

Speaker

Announced: June 2024