W.P.NO. 464 OF 2011

SHAHID ORAKZAI PUNJAB THROUGH CHIEF SECRETARY ETC.

22.03.2011. **Petitioner in person.**

Mr. Razzaq A. Mirza, Additional Advocate General Punjab.

The petitioner Shahid Orakzai has instituted this writ petition assailing the advice for the removal of seven Ministers belonging to the Pakistan Peoples Party by the Chief Minister of Punjab, with the following prayer:-

> *"i. Declare the advice of the Chief Minister as invalid.*
>
> *ii. Any other remedy for the supremacy of the Constitution when this petition is accepted with costs, to be paid by the Punjab."*

The petitioner who claims himself to be a candidate for the Provincial Assembly from PP-10, Rawalpindi stated to have instituted a C.P.No.94 of 2010 before the Honourable Supreme Court of Pakistan by virtue of a leave granting order of the Apex Court dated 23.02.2010 has contended in the instant writ petition that seven provincial ministers namely:-

1. Raja Riaz Ahmed
2. Haji Muhammad Ishaque
3. Mrs. Neelam Jabbar
4. Mr. Tanvir Ashraf Kaira

5. Mr. Muhammad Ashraf Khan Sohna
6. Mr. Tanvir ul Islam
7. Mr. Farooq Yousaf Ghurki

with the contention that the Chief Minister of Punjab in exercise of powers under Article 132(3) of the Constitution of Islamic Republic of Pakistan 1973 has advised the Governor of the Punjab to remove the above mentioned seven Provincial Ministers belonging to the Pakistan Peoples Party. The petitioner contends that this action of the Chief Minister of the Punjab be declared illegal, un-constitutional and of no legal effect.

2. The learned Additional Advocate General who entered appearance on behalf of the respondents raised an objection to the maintainability of the instant writ petition on the ground that the petitioner is not an aggrieved person by the act of the removal of the seven ministers of the Provincial Government of the Punjab and therefore the petitioner has no *locus-standi* to institute the instant writ petition.

3. When confronted with this objection the petitioner has addressed the arguments that since the advice of the Chief Minister of Punjab for the removal of the seven ministers from the Provincial Government of Punjab is not regulated by any law and no adequate remedy is available to him, therefore, he has instituted the instant writ petition. On the question of his *locus-standi* the petitioner contended that he is a *bona-fide* citizen of Pakistan and has a right to see that the constitutional obligations entrusted to a public officer be performed in accordance with law. He further contended

that since he has assailed the candidature of the Chief Minister of Punjab Muhammad Shahbaz Sharif into the elections of Provincial Assembly and the honourable Supreme Court of Pakistan has entered his C.P.No.1286/2009 by granting leave to appeal to the petitioner for consideration of the question of interpretation of Article 223(2 &3) of the Constitution of Islamic Republic of Pakistan 1973 vide order dated 23.2.2010. A copy of which has been placed as Annexure-B alongwith this writ petition, therefore, he has *locus-standi* to institute the instant writ petition against the constitutional performance of duties by the Chief Minister who according to the petitioner is holding his office only because the petitioner who was a rival candidate in the Election of the Provincial Assembly against the seat which election was won over by Muhammad Shahbaz Sharif, the present Chief Minister of the Punjab. No further arguments have been addressed by the petitioner in this context. The petitioner has also placed on record the copies of notification dated 26.02.2011 whereby the Chief Minister in exercise of his powers under Article 132(3) of the Constitution of Islamic Republic of Pakistan has advised the Governor of the Punjab to remove the seven ministers nominated in the notification from their respective offices with immediate effect. Upon which advice the Governor of the Punjab issued an order dated 01.03.2011 of removing the seven ministers of the Provincial Cabinet of the Government of the Punjab from their offices and a notification dated 01.03.2011 was issued accordingly to that effect.

4. The learned Additional Advocate General has addressed his arguments about the lack of the *locus-standi* of the petitioner to institute the instant writ petition by contending that the petitioner is neither a member of the parliament nor of the Assembly of the Punjab. It was further argued by the learned Additional Advocate General that the petitioner is not directly affected by the act of the Chief Minister and that he has no personal interest in the controversy raised in the writ petition, therefore, the instant writ petition cannot be entertained. The learned Additional Advocate General relied upon the judgments reported as **(PLD 2007 SC 386), (PLD 1972 Lah.847), (PLD 1978 SC 151), (1979 SCMR 299) (1982 PSC 888), (1987 SCMR 1577) (PLD 1996 SC 324), (19998 SCMR 1462), (1968 SCMR 995), (PLD 1969 SC 223), (PLD 1963 SC 564), (2009 SC 237), (PLD 2009 SC 531)** and **(PLJ 2010 Lah.514)** in support of his arguments. Thus it was concluded by the learned Additional Advocate General that the applying the principles of law as enunciated in the above mentioned reported judgments of the Honourable Superior Courts of Pakistan upon the concept of an aggrieved person, the instant writ petition instituted by the petitioner is not entertainable and is liable to be simply on the ground of that the petitioner has no *locus-standi* to institute the instant writ petition.

5. At the fog end of the arguments the petitioner who has addressed the arguments in his petition in person has prayed for the grant of a certificate to him in view of the provisions of Article 185 clause (2)(f) to the effect that the interpretation of some substantial question of law is

involved in the case as to the interpretation of the Constitution.

6. I have considered the arguments of the petitioner as well as the learned Additional Advocate General.

7. The petitioner has not been able to make out a case of establishing a *bona-fide* status creating a valid *locus-standi* as an aggrieved party to institute the instant writ petition against the act of the Chief Minister of the Punjab whereby he advised the Governor of the Punjab to remove the seven ministers from the Provincial Cabinet of the Government of the Punjab which advice has been acted upon by the Governor of the Punjab by issuing a notification dated 01.03.2011 removing the named above seven ministers in the notification from their respective offices. The concept of an aggrieved person has been addressed by the Superior Courts of Pakistan. The Article 199 of the Constitution of Islamic Republic of Pakistan in its clause(a) (i) reads as follows:-

> *"(a) on the application of any aggrieved party, make an order;*
>
> *(i) 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; or permitted by law to do, or to do anything he is required by law to do; or"*

The petitioner has asserted that his writ petition is intended to be covered by clause (a)(i) of Article 199 of the Constitution of Islamic Republic of Pakistan 1973. It is important to note that Article 199 (a)(i) provides that a petition under the said clause can only moved by "an aggrieved party". The petitioner in the instant writ petition has neither asserted nor has been able to make out in his arguments any facts qualifying him to be an aggrieved party in the impugned advice of the Chief Minister. Interesting to note that the petitioner is only aggrieved of the advice of the Chief Minister but not of the final notification which has been issued by the Governor of the Punjab about the removal of the seven ministers named above. The petitioner has just asserted himself to be a citizen of Pakistan which claim of the petitioner has not been controverted by the learned Additional Advocate General. But mere the status of being a citizen of Pakistan cannot be considered a sufficient cause for the petitioner to assail the advice of the Chief Minister of the Punjab for the removal of the seven ministers named above. Merely because the petitioner was a candidate against Chief Minister of the Punjab in PP-10 against which seat the Chief Minister was declared elected also does not clothe the petitioner with a sufficient status and qualification to challenge the constitutional performance of his official duties by the Chief Minister of Punjab. In this respect the stress of the petitioner that leave to appeal has been granted in his C.P.No. 1286/2009 for interpretation of the Article 223(2&3) of the Constitution of Islamic Republic of Pakistan which petition has been instituted by the petitioner against the election of the Chief Minister of the

Punjab in the previous elections cannot be accepted as a perfect incidence for creating an effective *locus-standi* in favour of the petitioner to institute the instant writ petition with the prayer as reproduced above.

8. The argument that against the impugned advice of the Chief Minister there is no alternate remedy available to the petitioner and therefore he has instituted a writ petition is of secondary importance and can be gone into only if the petitioner crosses the bridge of maintainability of writ petition by establishing a valid *locus-standi* an aggrieved party in the in the instant writ petition. The petitioner is admittedly "not a party" to the advice or actions of the Chief Minister assailed through the instant writ petition. The framers of the constitution have purposely restricted the scope of Article 199 (a)(i) to be a valid of only be "an aggrieved party". The petitioner has not asserted any facts on the basis of which he can claim to be an aggrieved party in the entire process which was commenced by the Chief Minister in the removal of the seven ministers named above. In the instant writ petition it is also to be noted that none of the above mentioned ministers have been impleaded by the petitioner either as the petitioners alongwith him or as the respondents of the writ petition about the removal of the seven ministers can be said to have arisen in the matter, it was only for the said ministers either individually or collectively to raise any objection upon and the petitioner who is not directly involved in the process in any manner nor is affected by the removal of the said ministers cannot be termed as an aggrieved party so

as to entitle the petitioner to institute the instant writ petition.

9. Apart from the case law which has been relied upon by the learned Additional Advocate General it would be advantageous to refer to back and fundamental judgment in this field ***Mian FAZAL DIN Vs. LAHORE IMPRVEMENT TRUST, LAHORE AND ANOTHER*** **(PLD 1969 SC 223)** wherein the honourable Supreme Court of Pakistan has expressed the following opinion at page 231 elaborating the concept of an aggrieved person for the purpose of instituting writ petition:-

> *"It is clear from the above that the right considered sufficient for maintaining a proceeding of this nature is not necessarily a right in the strict juristic sense but it is enough if the applicant discloses that he had a personal interest in the performance of the legal duty which if not performed or performed in a manner not permitted by law would result in the loss of some personal benefit or advantage or the curtailment of a privilege or liberty or franchise".*

This principle of law was subsequently followed in the reported judgment ***MUHAMMAD AFZAL AND OTHERS VS. GOVERNMENT OF PAKISTAN*** **(1987 SCMR 2778)** and ***Dr. ABDUL RAUF Vs. Sh. MUHAMMAD IQBAL*** **(1991 SCMR 483)**.The concept of a *locus-standi to institute certiorari the opinion De Smith's Judicial Review of Administrative Action (4th Edn.) at page 409 may be re-produced with an advantage.*

> *"All developed legal systems have had to face the problem of adjusting conflicts between two aspects of public interest – the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome*

interloper to invoke the jurisdiction of the courts in matters that do not concern him. The English common law dealt harshly with those who maintained others to institute civil proceedings in which they themselves had no direct interest: culpa est se immiscere rei ad se non pertinenti".

Later the same writer at page 418 of the book as expressed the following opinion:-

"whereas most of the cases on prohibition have arisen out of proceedings originally instituted before courts stricto sensu, the locus standi required of an applicant for certiorari has often arisen in the general field of administrative law. But most of the decisions have failed to provide a full exposition of the relevant principles and many of the dicta are ambiguous. It is not even clear how far the rules relating to prohibition are applicable to certiorari.

There are numerous dicta to the effect that a 'stranger' may be awarded certiorari. On the other hand, there is no reason for doubting the soundness of Lord Denning's observation that the court 'would not listen' of course, to a mere busy body who was interfering in things which did not concern him', and in no reported English case has an application brought by such a person successful. It is though that the present law may properly be stated as follows. Certiorari is a discretionary remedy, and the discretion of the court extends to permitting an application' to be made by any member of the public. A person aggrieved, i.e. one whose legal rights have been infringed or who has any other substantial interest in impugning an order, may be awarded a certiorari ex debito justitiae if he can establish any of the recognized grounds for quashing but the court retains a discretion to refuse his application if his conduct has been such as to disentitle him to relief. Only in highly exceptional circumstances would the court exercise its discretion in favour of an applicant who was not a person aggrieved".

In another book titled as "LOCUS STANDI AND JUDICIAL REVIW by S.M. Thio". The learned writer has written at page 98 the following few lines which are important and are reproduced:-

"The court will not listen, of course, to a mere busybody who was interfering with things which did not concern him, but it will listen to anyone whose interests are affected by what has been done just as it did in Greenbaum's case".

10. In an Indian case decided by the honourable Supreme Court of India reported as ***Shri Schidan and Panday V. The State of West Bangal*** **(AIR 1987 SC 1190)** the following opinion was expressed:-

> *"My purpose in adding these few lines of my own is to highlight the need for restraint on the part of the public interest litigants when they move courts. Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of Public Interest Litigation, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.*
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> *I should be not understood to say that traditional litigation should stay put. They have to be tackled by other effective methods, like decentralizing the judicial system and entrusting majority of traditional litigation to village courts and Lok Adalats without the usual populist stance and by a complete restricting of the procedural law which is the villain in delaying disposal of cases.*
>
> *It is only when courts are apprised of gross violation of Fundamental Rights by a group or class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the undergo and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants"*

11. From the perusal of the above mentioned case law as well as the opinion of the experts on the legal subject it can be safely concluded that the rules about the interpretation of the concept of *locus-standi* have not been fashioned by the Courts to apply uniformally. The question therefore is to be determined in the light of facts of each case. However the

preponderance of opinion appears to be that a person in order to qualify as an aggrieved person may not have a right in strict juristic sense but nevertheless he has established that some interest of his prejudicial affected by the impugned action. The courts will however, would be reluctant to allow just "busy body" to interference in the matters which do not concern him directly. The petitioner could not travel beyond the concept of a professional litigant and "meddlesome interloper" used by the De Smith's in Judicial Review of Administrative Action (4th Edn.) and therefore cannot be allowed to maintain the instant writ petition for the impugned action of the Chief Minister of the Punjab.

12. In view of all the above the instant writ petition lacking *locus-standi* by the petitioner is accordingly **dismissed** *in limine.*

(Nasir Saeed Sheikh)
JUDGE.

Announced in open Court on 25.03.2011

JUDGE.

APPROVED FOR REPORTING

AMJAD