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THE HON'ABLE HIGH COURT OF SINDH, AT KARACHI.

(ORIGINAL CONSTITUTIONAL JURISDICTION)

CONST. PETITION / P.I.L. NO.D 23 OF 2021

1. KANWAR NAVEED JAMEEL S/O KANWAR JAMEEL AHMED,
R/O HOUSE NO. 160, BLOCK B, MOHALLA UNIT NO.2, LATIFABAD,
DISTRICT HYDERABAD.
CNIC # 41304-0863783-7
MPA, PS-127 Karachi Central-V
BUNGALOW NO.13-A, PHASE-I, DHA, NEAR DEFENCE HEAD OFFICE,
KARACHI;

2. KISHWER ZEHRA D/O SYED RASHID MEHDI,
R/O HOUSE NO. 179-D, K.D.A., SCHEME NO.1, TIPU SULTAN ROAD,
KARACHI.
CNIC # 42201-7366113-8
M.N.A., RESERVED SEAT.;

3. SYED HASHIM RAZA S/O SYED NAJAM-UL-HASAN,
R/O HOUSE NO.2394, ST. NO.7, MOHALLAH AREA 36-G, SHARIF
COLONY, LANDHI, DISTRICT MALIR, KARACHI.
CNIC # 42201-1718224-3
M.P.A., PS-94 KORANGI KARACHI-III;

4. GHULAM GILLANI S/O GULSHEED AHMED KHAN,
R/O HOUSE NO.R-13, MOHALLAH KORANGI NO.2, SECTOR 33/C,
KARACHI.
CNIC # 42201-9911085-3
M.P.A., PS-96 KORANGI KARACHI-V;

5. JAVED HANIF KHAN S/O MUHAMMAD HANIF KHAN,
R/O HOUSE NO.98, MAIN SABA AVENUE, PHASE-VI, DHA, KARACHI,
CNIC # 42201-0253762-1
M.P.A., PS-95, KORANGI, KARACHI-V;

6. WASEEM UDDIN QURESHI S/O RAFI UDDIN QURESHI,
R/O HOUSE NO.R-197, SECTOR 11-C-3, MOHALLAH SIR SYED TOWN,
NORTH KARACHI, CENTRAL, KARACHI.
CNIC # 42101-1543977-3
M.P.A., PS-123, KARACHI CENTRAL-I

.....PETITIONER(S)

VERSUS

1. THE PROVINCE OF SINDH ,
THROUGH ITS
CHIEF SECRETARY, GOVT. OF SINDH,
SINDH SECRETARIAT,
KARACHI;

2. THE SECRETARY,
SERVICES, GENERAL ADMIN. & CORD. DEPT.
GOVT. OF SINDH, SINDH SECRETARIAT,

ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI.
C.P. No.D-23 of 2022.

Date	Order with signature of Judge
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1. For orders as to maintainability of instant petition.
2. For orders on statement dated 23.05.2022 / CMA No.15095/22.

01.06.2022.

M/s. M. Tariq Mansoor and Ahmed Zameer, Advocates for the petitioners.
Mr. Salman Talibuddin, Advocate General Sindh a/w Mr. Muhammad Yousuf Rahpoto, Assistant Advocate General.
Mr. Munir Ahmed Advocate for the Intervenor No.1
Mr. Mukesh Kumar G. Karara, Advocate a/w Mr. Nabi Bux Laghari, Advocate for Respondents No.6 & 7.
Mr. Samiullah Kakar on behalf of CTSP.

Mohammed Karim Khan Agha J. The petitioners have filed statement dated 23.05.2022 whereby they have sought the recusal of one of us (Mohammed Karim Khan Agha J) from hearing this petition and sought the establishment of a larger bench of 10 Judges of this court by the Hon'ble Chief Justice of this court to hear this petition.

Turning to the first aspect of the statement namely the recusal of Mr. Muhammed Karim Khan Agha J. from hearing this petition.

1. By way of background this petition was originally fixed before DB I however on account of the prima facie (mis)behavior of learned counsel for the petitioners one of the learned Judges of that DB marked the petition as not before him. Hence the petition was placed before this DB VII (this DB) for hearing. This DB held numerous hearings, without complainant, and had fixed the petition for arguments on maintainability on 23.05.2022 at 08.30am. Unfortunately one of the members of this DB was not available on that day and the petition was placed before DB VI where again the learned counsel for the petitioners prima facie (mis)behaved with the members of the Bench. The petition has now been placed before this DB as per roster.

2. In the petitioners' statement and arguments before this bench the petitioners have mainly sought recusal of the concerned judge on account of his perceived impartiality. It is well settled by now that it is up to a judge based on his own conscience whether he decides to hear a case or not. In this respect

reliance is placed on the case of **Independent Media Corporation v. Federation of Pakistan** (PLD 2014 SC 650) where a judge declined to recuse himself from a case in the face of a perception being created that he was related to a party to the case or where objections were made to a particular judge so that the objecting counsel could attempt to get benches of his own choice where it was held as under:

"10. In the above context, it may be useful to record that all litigants at times make attempts to avoid hearing before certain Benches but at times such attempts are not well intentioned. There may even be attempts to intimidate or malign judges or institutions of the State and thereby, to undermine such individuals or institutions.

11. It is in this context that two instances can be referred to by us. When I, (Jawwad S. Khawaja, J.) was a Judge of the High court, I received a letter stating therein that I had illicit relations with women folk of the opposite party. The said letter was circulated by me amongst the lawyers of the parties. The persons who purportedly wrote this letter was summoned in Court on the following day. She appeared in Court. Her demeanor in Court depicted that she was a simple village woman. She admitted that she wrote the said letter. When asked why she did so, she replied that she did not want the case to be heard by me and was advised by a worldly-wise man in the village to write the letter to me and as a consequence the case would be ordered to be placed before some other Bench. **This approach is unfortunate but is prevalent in our society. Judges cannot be tricked by such tactics. If they succumb to such tactics they will thereby empower litigants and enable them to control fixation of cases and constitution of Benches.**

12. There is another instance relating to a commercial matter in which a letter was received by me. This letter was purportedly from one of the parties to the case. In the letter it was stated that I had been a lawyer for one of the parties and was, therefore, biased in favour of the opposite side. This letter was also circulated amongst the lawyers of the parties at which point the party who was purported to have written the letter stood up in Court and stated that he had not written the letter and in fact he would want the same Bench headed by me to hear the case.

13. These instances show that there can be reasons, other than those that meet the eye, which may motivate a remark or comment. If judges do not deal firmly with such remarks (where unfounded) this may encourage unscrupulous or uninformed elements into saying things which may erode the standing, respect and credibility of the Court. The hearing of this case at intervals today is significant. Courts are not to succumb to any remark, defamatory or otherwise. It is the conscience of the Judge himself which must determine his decision to sit on a Bench or not."

3. As mentioned earlier in this order the learned counsel for the petitioners appears to be using a tactic whereby through his (mis)behavior in court he attempts to cow down our brother judges so that they may be tempted to mark the case not before them so that ultimately learned counsel for the petitioners might get a bench of his own choice which conduct cannot be countenanced and

must be discouraged especially as this unethical practice appears to be on the rise these days. Such tactic was exposed by the Supreme Court in the case of **General (R.) Parvez Musharraf v. Nadeem Ahmed Advocate** (PLD 2014 SC 585) where, it was noted as under;

"6. Judges, it may be noted, do encounter allegations of bias and also receive criticism some of which may be expressed in civil language while others may be through hate speech or outright vilification based on malice. In either event, the Judge by training does not allow such vilification to cloud his judgment in a judicial matter. Even extremely derogatory language used against Judges does not, by itself create bias, as is evident from the negligible number of contempt cases based on scandalisation of Judges, (none leading to a sentence) cited in the case titled Baz Muhammad Kakar v. Federation of Pakistan (PLD 2012 SC 923). Courts, therefore, cannot decide questions of perceived bias by accepting the individual and personal views of an aggrieved petitioner and thus recuse from a case. It was pointed out to Mr. Pirzada, Senior Advocate Supreme Court that if a subjective perception of bias could be made a basis for recusal of a Judge merely because the petitioner had done things or had taken unconstitutional steps against the former Chief Justice, it would be very simple for any litigant not wanting his case to be heard by a particular Judge to start hurling abuses at such Judge and thereafter to claim that the Judge was biased against him. For litigants and their Advocates it is important to bear this in mind while urging 'perception of bias' against a Judge."

4. It is also significant that learned counsel for the petitioners raised no objection to the member of the bench hearing the case against whom they have now sought recusal **on four separate hearings** since prima facie the petitioners seemed satisfied that the case was not proceeding for one reason or another mainly at their behest and only moved the recusal statement once the bench put the learned counsel for the petitioners on notice to satisfy the court as the maintainability of the petition.

5. As mentioned earlier in this order it is well settled by now that it is for the Judge himself to determine whether to recuse from a case or not. The case law discussed above discourages recusal where it is apparent that the perception of bias/impartiality is being created by a litigant or a counsel to divert a case from a Bench which he perceives as unfavorable to a Bench which he perceives as more favorable. To succumb to such tactics would not only send the message that the judges can be cowed into submission by such tactics, it would also erode public confidence in the courts and at the same time it would increase the work load of the bench to whom the case is passed on to.

6. As such the concerned Judge (Muhammed Karim Khan Agha-J) whose recusal is sought has decided to hear this petition. *5*

With regard to the establishment of a larger bench of 10 Judges of this court.

7. The learned counsel for the petitioners contended that this was a particular complex case and required the formation of a larger bench of 10 Hon'ble Judges of this court and that this bench should make such a request to the Hon'ble Chief Justice for this purpose. This position was refuted by learned counsel for the respondents who contended that it was a regular case which involved no overly complex questions of law so as to justify a larger bench let alone a Bench of 10 Judges of this court being constituted to hear the petition.

8. On a brief review of the petition we find that there are no undue legal complexities or other compelling reasons which would justify this petition being referred to the Chief Justice to establish a larger bench of this court to hear this petition especially given the back log of cases in this court which need to be attended to. It is notable that this request for a larger bench was **not** made when the petition was filed but instead has been made **after 8 separate hearing dates** which indicates that this is an after thought prima facie with the intention of delaying the hearing of this petition for which the learned counsel for the petitioners obtained an ex parte stay order on the first day of hearing. Keeping in view the above discussion on this aspect of the case the request to ask the Hon'ble Chief of this Court to form a larger 10 member bench is also dismissed.

9. The upshot of the above discussion is that the requests made in the Statement/application are dismissed and these are the reasons for our short order of even date.

10. **Before parting with this order** however it pains us to record that when the statement/application was dismissed vide the aforesaid short order and learned counsel for the petitioner Mr. Muhammad Tariq Mansoor was asked to make his submissions on the maintainability of the petition rather than doing so he started to make scurrilous, scandalous, offensive and insulting remarks against this bench and the judiciary which tirade continued unabated for about 15 to 20 minutes despite the learned counsel for the petitioners being asked on numerous occasions to leave the rostrum (which he refused to do) and the reader of this court calling other cases listed for hearing which lead to the dismissal of his petition for non prosecution vide the above mentioned short order. At one point learned Advocate General's assistance was sought who was unable to persuade the learned counsel for the petitioners to leave the rostrum and on the

bench's query as to the conduct of the learned counsel of the petitioners the learned Advocate General Sindh advised the bench that the conduct of the learned counsel for the petitioners prima facie amounted to contempt on the face of the court. By however showing maximum judicial restraint largely on account of the young age of the petitioner and with a view to avoid potentially damaging his career this bench decided by the skin of its teeth against initiating such proceedings. Such prima facie (mis) behaviour on the part of learned counsel for the petitioners however is highly deprecated and is not expected of an advocate of the high court and as such learned counsel for the petitioners is cautioned as to his future conduct when appearing before this Court lest he might face appropriate proceedings in accordance with law.