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View from the Courtroom: Petitions against military courts' convictions enter decisive stage

Waseem Ahmad Shah | February 24, 2020

Around 250 petitions challenging the conviction of suspected militants by military courts before the Peshawar High Court have entered a decisive stage as after repeated orders the ministry of defence finally submitted the relevant records in these cases.

Because of delay in submission of the said records, a bench of the high court, headed by Chief Justice Waqar Ahmad Seth, had on Feb 11 directed the lawyers representing the convicts and the federal and Khyber Pakhtunkhwa governments to submit written arguments and on the basis of those arguments the court would announce judgment in these cases on Feb 20.

However, a bench of PHC Chief Justice Waqar Seth and Justice Mohammad Naeem Anwar on Feb 20 adjourned hearing of these cases to March 10 as the records in these cases were produced before it. Proceedings in all these cases are conducted in-camera.

A bench headed by the present chief justice had on Oct 18, 2018, accepted 75 writ petitions of military court convicts, mostly facing capital punishment, and had set aside their convictions and sentences.

The Supreme Court of Pakistan had suspended the said judgment of the high court over appeals filed by the government. The main appeals of the government have still been pending before the apex court.

In those cases, the high court had ruled that these convictions were made without evidence and were based on malice in law and facts. In the detailed judgment, the high court bench had discarded the confessional statements of all the convicts by discussing the flaws therein.

Last year, an application was filed on behalf of the federal and provincial governments for constituting a larger bench to hear these cases. The applicants had contended that the division bench, headed by Chief Justice Waqar Ahmad Seth, had in its judgment in Oct 2018 (Abdur Rasheed versus Federation of Pakistan and others) taken a view altogether different from the one earlier expressed by 21 different benches of the high court in more than 24 cases involving the same points.

The applicants stated that previously divisional benches of this court, in similar cases, had held that it lacked the jurisdiction to question the verdict of Field General Court Martial (FGCM) passed under the Pakistan Army Act 1952.

While rejecting the said application a bench of Chief Justice Waqar Seth and Justice Abdul Shakoor had observed that on March 19, 2019, applicants (government) were given last opportunity by the bench to produce the relevant record regarding conviction of the accused/ convicts for the examination of their counsel on May 25, 2019, positively, failing which the matter would be heard on the available record on May 28, 2019.

The court observed that on May 28 instead of submitting the requisite record on basis of which convictions were recorded, the applicants only submitted their comments. Subsequently, the court decided that these cases would be decided on Oct 1, 2019, on the basis of written arguments of all the parties.

The applicants submitted the application for constituting a larger bench on Oct 1, 2019. "The conduct of the applicants/respondents is more than sufficient in proving, the instant application is filed with mala fide intention to delay the disposal of the above writ petitions which are pending disposal since long," the bench had ruled.

"A close examination of earlier judgments of the Benches of this Court would show that there was no such material before them, which came in the case of Abdul Rasheed and cases connected therewith. Hence, they have declined to interfere with the conviction recorded and sentence awarded to the convicts by the Military Courts," the bench had ruled.

The bench had further ruled: "Whereas, the Bench decided the case of Abdul Rasheed Vs the Federation of Pakistan and other connected cases, has summoned the complete record of the Military Courts on the basis of which it has recorded the conviction of the accused/convicts and accordingly awarded them sentences."

"Proceedings, before the Military Courts, in fact, were a complete prosecution show and accused/convicts were denied their fundamental right of engaging a private counsel of their choice at their own expense," the bench had ruled.

It was pointed out that in the judgment in Abdur Rasheed case it was also observed by the Bench that nothing on the record showed that during trial, families of the accused/convicts who frequently requested for meeting with them in the Interment Centre were ever informed or had the knowledge of the trial proceedings. The alleged confessional statements made by the accused/convicts without any independent advice after months/years of confinement with Military Courts and Interment Centre, cannot be made a basis for awarding them a sentence of capital punishment.

Prior to the 2018 judgment, another bench of the high court, headed by then Chief Justice Yahya Afridi (now a judge of Supreme Court) and Justice Ikramullah Khan, had on May 25, 2017, upheld convictions and sentences of death awarded to 35 militants by military courts. The said bench had only remanded two of the cases to the trial court only for reconsidering the quantum of sentences slapped on the two convicts.

That bench had overruled a major argument of the petitioners' counsels about the mode and manner of the confessional statement recorded by those convicts.

The bench had ruled: "No doubt, the challenge made to the mode, manner and the time of confessions made by the accused, under the ordinary criminal jurisprudence would seriously diminish the evidentiary value thereof. But in view of the limited scope available to this constitutional Court in evaluating the evidence and the repeated admission of guilt by the accused convict does not warrant interference in the impugned conviction and sentence awarded by the Military Court."

Moreover, the Supreme Court had on Aug 29, 2016, dismissed appeals of 16 convicts of military courts challenging their conviction as well as upholding of their conviction by the high courts, including PHC. Review petitions filed against that judgment of the apex court have still been pending.

While rejecting those 16 leave to appeal petitions, the Supreme Court bench had ruled about each of the case that the examination of the record revealed that the Field General Court Martial was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder and hence the conviction and sentence do not appear to be coram non judice. The bench had ruled that no illegality exists in conduct of the trial.

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