



RULING OF THE CHAIR

COUNCIL OF COMMON INTERESTS (CCI)

A motion under rule 218, Rules of Procedure and Conduct of Business in the Senate, 2012, notice of which was received on 26th November, 2015, was moved by Senator Sassi Palijo on 21st December, 2015, in the 122nd Session of the Senate, on the subject that, “this House may discuss the domain and jurisdiction of the Council of Common Interests (CCI) and the situation arising out of non-convening of meeting of the Council as required under clause (3) of Article 154 of the Constitution of the Islamic Republic of Pakistan”.

2. As this important constitutional question had been raised frequently in prior sessions of the Senate, some Members urged the Chairman to make an observation. A tentative observation was made, which is part of the proceedings of the said sitting, but I reserved my Ruling.

3. The pivotal role of the Council of Common Interests (CCI) and such like institutions in a participatory federal constitutional frame work cannot be under played. In the Pakistani constitutional framework, it is necessary to trace the historic continuity of inter-provincial and federal government foras.

4. **CONSTITUTIONAL HISTORY:**

(i) **The Government of India Act, 1935:**

Section 135 of the said Act provided as under:-

“(135) *Provisions with respect to an Inter-Provincial Council*

If at any time it appears to His Majesty upon consideration of representations addressed to him by the Governor-General that the public interests would be served by the establishment of an Inter-Provincial Council charged with the duty of—

- (a) *inquiring into and advising upon disputes which may have arisen between Provinces;*
- (b) *investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces, have a common interest; or*
- (c) *making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,*

it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure. An Order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council.”

(ii) The Constitution, 1956:

- (a) The Constitution, 1956, also set in place a dispute resolution mechanism to settle any disagreement(s) between and within the Central and Provincial Governments. It provided under Article 156, that the Supreme Court in its original jurisdiction may take up any dispute between, (a) the Federal Government and Government of one or both Provinces, or (b) the Federal Government and one Province or other Provinces, and (c) between the Provinces.
- (b) The said Constitution authorized the President to establish an Inter-Provincial Council if it appeared to serve the public interest. Articles 130 and 156 are reproduced as under:

ARTICLE 130:

“130. Inter-Provincial Council. -If at any time it appears to the President that the public interest would be served by the establishment of an Inter-Provincial Council charged with the duty of – (a) investigating and discussing subjects in which the Provinces, or the Federation and one or both of the Provinces, have a common interest; or (b) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, the President may, with the consent of the Governors of the Provinces, establish such a Council and define the nature of the duties to be performed by it, and its organization and procedure.”

ARTICLE 156:

“156. National Economic Council.—(1) The President shall constitute a National Economic Council which shall consist of—

- (a) *the Prime Minister, who shall be the Chairman of the Council;*

- (b) *the Chief Ministers and one member from each Province to be nominated by the Chief Minister; and*
- (c) *four other members as the Prime Minister may nominate from time to time.*
- (2) *The National Economic Council shall review the overall economic condition of the country and shall, for advising the Federal Government and the Provincial Governments, formulate plans in respect of financial, commercial, social and economic policies; and in formulating such plans it shall, amongst other factors, ensure balanced development and regional equity and shall also be guided by the Principles of Policy set out in Chapter 2 of Part-II.*
- (3) *The meetings of the Council shall be summoned by the Chairman or on a requisition made by one-half of the members of the Council.*
- (4) *The Council shall meet at least twice in a year and the quorum for a meeting of the Council shall be one-half of its total membership.*
- (5) *The Council shall be responsible to the Majlis-e-Shoora (Parliament) and shall submit an Annual Report to each House of Majlis-e-Shoora (Parliament)."*

- (c) Under Article 200, Constitution, 1956, the President could appoint a Board for each Province consisting of representatives of the Federal and Provincial Governments to advise the Federal Government on matters relating to Post and Telegraph (Federal subject) in the Province.
- (d) The Constitution, 1956, further provided for the establishment of two other governmental foras, where both the Federal and Provincial Governments were represented. Said Foras were the National Finance Commission (NFC) and the National Economic Council (NEC).
- (e) The NFC comprised of the Federal Finance Minister, as Chairman, along with the Provincial Finance Ministers and other relevant officials who could only be appointed after consultation with the Governors of the Provinces.
- (f) The NEC was to be constituted by the President, consisting of four (4) Federal Ministers, three (3) Ministers from each Province and the Prime Minister was to be the Ex-Officio Chairman.

(iii) The Constitution, 1962:

- (a) The Constitution, 1962, to a great extent adopted the mechanism for dispute resolution between the Centre and the Provinces as was provided in the Constitution, 1956. It granted powers to the Supreme Court in such disputes, however, the modalities of dispute resolution under-went certain changes.

(b) The provision of Inter-Provincial Council as provided under Article 130 of the Constitution, 1956, was not included in the said Constitution. It continued with the provisions of the NFC and NEC.

(c) Article 132, Constitution, 1962, gave powers to the Provincial Assemblies to legislate on residual matters. The Central Legislature had exclusive jurisdiction to make laws with respect to any matter enumerated in the Third Schedule thereof. However, the powers of the Central Legislature were greatly enhanced through clause (2) of Article 131 which is reproduced as under:

“(2) Where the national interest of Pakistan in relation to---
(a) the security of Pakistan including the economic and financial stability of Pakistan; or
(b) planning or co-ordination; or
(c) the achievement of uniformity in respect of any matter in different parts of Pakistan.
so requires, the Central Legislative shall have power to make laws (including laws having extra-territorial operation) for the whole and any part of Pakistan with respect to any matter not enumerated in the Third Schedule.”

(d) The said Constitution, granted special legislative powers to the Central Legislature in the name of national interest.

(iv) The Constitution, 1973:

The Constitution, 1973, in the matter of dispute resolution provided for the Council of Common Interests (CCI), under Article 153 of the said Constitution.

(a) Article 153 is reproduced herein as under:

“153. (1) There shall be a Council of Common Interests, in this Chapter referred to as the Council, to be appointed by the President.
(2) The members of the Council shall be -
(a) the Chief Ministers of the Provinces, and
(b) an equal number of members from the Federal Government to be nominated by the Prime Minister from time to time.
(3) The Prime Minister, if he is a member of the Council, shall be the Chairman of the Council but, if at any time he is not a member, the President may nominate a Federal Minister who is a member of the Council to be its Chairman.
(4) The Council shall be responsible to Parliament.”

(b) The said Constitution also provided under Article 154 that Parliament, in Joint Sitting, may from time to time, by resolution issue directions through the Federal

Government to the Council generally, or in particular matters to take action as Parliament may deem just and proper and such directions shall be binding on the Council. It further provided that if the Federal Government or a Provincial Government is dissatisfied with a decision of the Council it may refer the matter to Parliament in a Joint Sitting whose decision in this behalf shall be final.

- (c) Article 155, provided that if an interest of the Province, the Federal Government or the Federal Administrative Tribal Areas or any of the inhabitants thereof, in water from any natural source of supply have been or are likely to be effected prejudicially, the Federal or Provincial Governments concerned may make a complaint in writing to the Council.
- (d) Article 184, provided for resolution of disputes between any two or more Provincial Governments or Federal and Provincial Governments, by invoking the original jurisdiction of the Supreme Court of Pakistan.
- (e) Article 160, provided for the constitution and functioning of the National Finance Commission (NFC). A major departure from the past constitutional practice of the NFC being constituted on the prerogative of the President was taken away.
- (f) Article 156, provided for the constitution of the National Economic Council. Departure from the past constitutional practice of the prerogative of the President in its constitution was omitted.
- (g) Article 70(4), provided for three (3) Legislative Lists in the Fourth Schedule namely, the Federal Legislative List Part-I, the Federal Legislative List, Part-II and the Concurrent Legislative List. All residuary powers of legislation rested with the Provincial Assemblies.

I will now proceed to examine the function and responsibilities of the Council of Common Interests (CCI) as they stood prior to the 18th Constitutional Amendment.

FUNCTION OF THE COUNCIL OF COMMON INTERESTS:

- (aa) Article 154, Constitution, 1973, provided that the CCI shall, formulate and regulate policies in relation to matters in the Federal Legislative List, Part-II, and shall exercise supervision and control over related institutions.

- (bb) There were a of total 8 Items in the Federal Legislative List, Part-II, over which the CCI was to formulate and regulate policies and exercise supervision and control over related institutions. The said List is reproduced as under:

PART II

1. *Railways.*
 2. *Mineral oil and natural gas; liquids and substances declared by Federal law to be dangerously inflammable.*
 3. *Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest; institutions, establishment bodies and corporations administered or managed by the Federal Government immediately before the commencing day, including [Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation]; all undertakings, projects and schemes of such institutions, establishments, bodies and corporations, industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation.*
 4. *Council of Common Interests.*
 5. *Fees in respect of any of the matters in this Part but not including fees taken in any court.*
 6. *Offences against laws with respect to any of the matters in this Part.*
 7. *Inquiries and statistics for the purposes of any of the matters in this Part.*
 8. *Matters incidental or ancillary to any matter enumerated in this Part.*
- (cc) Clause (2) of Article 154, Constitution, 1973, provided that the Council may frame its own Rules of Procedure unless provision in this regard was made by an Act of Parliament.
- (dd) Clause (4) of Article 154, Constitution, 1973, provided that, the Council shall act in accordance with the directions of Parliament given in a Joint Sitting.
- (ee) Article 155, Constitution, 1973, provided that the Council shall take cognizance of disputes pertaining to distribution of water.
- (ff) Article 153, Constitution, 1973, provided that the CCI is responsible to the Parliament.

(v) **Constitution, 1973 (as amended by the Eighteenth Constitutional Amended Act, 2010).**

- (a) The All Parties Constitutional Committee, which drafted the 18th Constitutional Amendment, and subsequently Parliament which passed the 18th Amendment, with deliberate intent and design enhanced and widened the scope, functions and responsibilities of the Council of Common Interests (CCI).
- (b) This intent of the legislature drew from amongst other strands of the 18th Amendment namely, (i) the increase in Items in the Federal Legislative List, Part-II, from 8 to 18, and (ii) the abolition of the Concurrent Legislative List. Their wisdom perceived that with devolution of 48 Items in the Concurrent Legislative List, the necessity for greater inter-provincial and provincial-federal harmony in policy formation and other related matters will be necessary. This laced with and, placed in juxtaposition to the increase in Items in the Federal Legislative List, Part-II, as a consequence, the enlargement in the number of related institutions, over which it is to exercise supervision and control, the role of the Council will be magnified in comparison to when it functioned under the Constitution, 1973, prior to the 18th Amendment. Therefore, the said Amendment provided for and amended Articles 153 & 154 of the Constitution, 1973, in the following amongst other terms:-
- (aa) Article 153 was amended to provide – (i) The Council shall consist of, the Prime Minister, as the Chairman of the Council; (ii) the Chief Ministers of the Provinces (iii) three (3) Members from the Federal Government to be nominated by the Prime Minister from time to time. The CCI shall submit an Annual Report to both the Houses of Majlis-e-Shoora (Parliament).
- (bb) Article 154 was amended to provide, (i) the Council shall be constituted within 30 days of the Prime Minister taking oath of office; (ii) the Council shall have a permanent secretariat and shall meet at least once in 90 days. The said Article provides that Prime Minister may convene the meeting on the request of the Province on an urgent matter.
- (cc) The 18th Constitutional Amendment, made a departure from the Constitution, 1973, and provided that the Prime Minister shall be the Chairman of the Council. No Federal Minister can act or be appointed as its Chairman. This amendment was made in order to underlie the

importance of the Council for amongst others, the reasons stated hereinabove.

- (dd) The 18th Constitutional Amendment, further emphasized the importance of the CCI, when it provided that the same shall be constituted within 30 days of the Prime Minister taking oath of office.
- (ee) The intent of the amendment, as reflected in para (dd) above, whereas, on the one hand was to clip the delay in its formation, on the other, it emphasized the role of the CCI in terms of, and in relation with, the Items listed in the Federal Legislative List, Part-II, is no less than the Federal Cabinet provided under Article 91, Constitution, 1973.
- (ff) The drafters of the 18th Constitutional Amendment, were conscious of the sordid history relating to or pertaining with the meetings of the CCI, wherein from its creation in 1973 till 2010, approximately only 11 meetings were held. Therefore, the intermingling of the almost non-functional status of the CCI, inter-twining it with the increase in the number of Items in the Federal Legislative List, Part-II, and finally twisted by the devolution of 49 Items through the abolition of the Concurrent Legislative List, provided the rope which necessitated that a minimum number of meetings and the stipulated period within which they are to be held, be provided for in the Constitution. Therefore, it is a constitutional obligation that the CCI meet at least once in 90 days.
- (gg) For the sake of avoiding repetition, let it suffice, that for the reasons stated herein above, it became necessary and imperative, that with the enhanced quantum of work, the CCI functions with its own Secretariat in order to receive cases, summaries and reports etc. and subsequently to oversee the implementation of the decisions, directives and orders of the CCI. Therefore, it was so provided.
- (hh) Clause (5) of Article 154, provided that the CCI, until Parliament so frames, can formulate its Rules of Procedure. The said Rules known as, "*Rules of Procedure of Council of Common Interests, 2010*," were published in the Gazette of 2nd August, 2010.
- (ii) Rule 4 of the said Rules provides for, "*The Functions of the Council*", Schedule-I of the said rules provides a list of cases to be submitted to the Council, it has 22 Entries. Rule 4, gives operation to the command

contained in clauses (1) & (2) of Article 154 of Constitution, 1973. The said Entries are reproduced as under:

SCHEDULE I

CASES TO BE SUBMITTED TO THE COUNCIL

- (1) *Railways;*
- (2) *Mineral oil and natural gas, liquids and substances declared by Federal law to be dangerously inflammable;*
- (3) *Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest; institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day, including Water and Power Development Authority and Pakistan Industrial Development Corporation and all undertakings, projects and schemes of such institutions, establishments, bodies and corporations; industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation;*
- (4) *Electricity;*
- (5) *Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and power of port authorities therein;*
- (6) *All regulatory authorities established under a Federal law;*
- (7) *National planning and national economic coordination including planning and coordination of scientific and technological research;*
- (8) *Supervision and management of public debt;*
- (9) *Census;*
- (10) *Extension of the powers and jurisdiction of members of a police force belonging to any Province to any area in another Province, but not so as to enable the police of one Province to exercise powers and jurisdiction in another Province without the consent of the Government of that Province;*

extension of the powers and jurisdiction of members of a police force belonging to any Province to railway areas outside that Province;

- (11) *Legal, medical and other professions;*
 - (12) *Standards in institutions for higher education and research, scientific and technical institutions;*
 - (13) *Inter-provincial matters and co-ordination;*
 - (14) *Council of Common Interests;*
 - (15) *Fees in respect of any of the matters specified in Part-II of the Federal Legislative List but not including fees taken in any court;*
 - (16) *Offences against laws with respect to any of matters in Part-II of the Federal Legislative List;*
 - (17) *Inquiries and statistics for the purposes of any of the matters in Part II of the Federal Legislative List;*
 - (18) *Matters incidental or ancillary to any matter enumerated in Part-II of the Federal Legislative List;*
 - (19) *Complaints as to interference with water supplies (Article 155);*
 - (20) *Implementation of the directions given by the Parliament for action by the Council under Article 154(6);*
 - (21) *Submission of Annual Report to both Houses of Parliament (Article 153(4); and*
 - (22) *Resolutions of disputes with respect to construction of Hydro electric station in any Province (Article 157(3)).*
- (jj) Similarly, rule 10 provides for the manner of submission of cases, the preparation of summaries and documents that are to be submitted before the CCI. The same are more fully described in Schedule-II & III of the said rules.
- (kk) In order to elaborate the enormity of work of the CCI, in terms of formulation and regulation of policies, supervision and control over

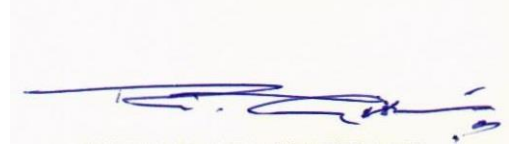
related institutions i.e. all autonomous and semi-autonomous bodies or those created or functioning under a Federal Statute as provided under the Federal Legislative List, Part-II. The said List is reproduced as under:

- “(1) Railways;*
- (2) Mineral oil and natural gas, liquids and substances declared by Federal law to be dangerously inflammable;*
- (3) Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest; institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day, including Water and Power Development Authority and Pakistan Industrial Development Corporation and all undertakings, projects and schemes of such institutions, establishments, bodies and corporations; industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation;*
- (4) Electricity;*
- (5) Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of port authorities therein;*
- (6) All regulatory authorities established under a Federal Law;*
- (7) National planning and national economic coordination including planning and coordination of scientific and technological research;*
- (8) Supervision and management of public debt;*
- (9) Census;*
- (10) Extension of the powers and jurisdiction of members of a police force belonging to any Province to any area in another Province, but not so as to enable the police of one Province to exercise powers and jurisdiction in another Province without the consent of the Government of that Province; extension of the powers and jurisdiction of members of a police force belonging to any Province to railway areas outside that Province;*
- (11) Legal medical and other professions;*
- (12) Standards in institutions for higher education and research, scientific and technical institutions;*
- (13) Inter-provincial matters and co-ordination;*
- (14) Council of Common Interests;*
- (15) Fees in respect of any of the matters in this Part but not including fees taken in any court;*

- (16) *Offences against laws with respect to any of the matters in this Part;*
- (17) *Inquiries and statistics for the purposes of any of the matters in this Part;*
- (18) *Matters incidental or ancillary to any matters enumerated in this Part.”*

5. Now turning to the question raised in the motion under rule 218, the subject matter of this Ruling, namely, “situation arising out of non-convening of the meeting of the Council as required under clause (3) of Article 154 of the Constitution of Islamic Republic of Pakistan”, from the record available, the last meeting of the CCI was held on 18th March, 2015.
6. Clause (3) of Article 154, Constitution, 1973, provides, “.....and shall meet once in 90 days:”, therefore, the CCI should have *stricto-senso* met on the 16th June, 2015 i.e. on the 90th day as required by the Constitution, 1973. According to the statements of Ministers, made on the floor of the House, the Council of Common Interests has not met till the announcing of this Ruling i.e. 331 days have passed and the CCI has failed to meet or be summoned to meet. The Federal Government is, and continues day to day, to violate the provisions of clause (3) of Article 154 of the Constitution, 1973.
7. The consequences that flow there-from , are grave and can have a chaotic effect bringing the entire state machinery pertaining to or dealing with the Items in the Federal Legislative List, Part-II to a grinding halt. All matters relating to the formation and regulation of policies and exercising supervision and control over related institutions covered in the Federal Legislative List, Part-II, will be of no legal effect, if they have not been passed or approved by the Council of Common Interests. Further, the Rules of the Council do not provide for the Prime Minister to take a decision and subsequently refer it to the Council for its approval, nor can the Federal Cabinet constituted under Article 91 of the Constitution, 1973, arrogate to itself the powers conferred on the CCI through Articles 154 & 155 of the Constitution, 1973.
8. I am conscious of the constitutional chaos and mayhem that can be created, therefore, I, reluctantly, restrain to hold all such decisions, actions and orders to be unconstitutional. However, any action taken in violation of the constitutional scheme from fifteen days after the date of announcement of this Ruling will be in violation of the Constitution.

9. Before parting with this Ruling, the Senate Secretariat, is directed to send a copy of the Ruling to the President of Pakistan, Prime Minister of Pakistan, Speaker, National Assembly, the Minister for Inter-Provincial Coordination, Minister for Law and Justice and the Provincial Chief Ministers.



MIAN RAZA RABBANI
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Chairman Senate

Senate Sitting dated 12th February, 2016
124th Session – Announced in the House.