



21 August 2011

Mr. Sajid Mahmood Qazi,
Additional Registrar,
Supreme Court of Pakistan,
Supreme Court Building,
Constitution Avenue,
Islamabad.

Sub: Report of TI Pakistan on Information/material in Suo Motro Case 18 of 2010

Dear Sir,

In response to the Supreme Court Notice published on 19 August 2011, Transparency International Pakistan would like to submit the statement/material which will be helpful in the process of determination of the terms of the inquiry in the Suo Moto Case 18 of 2010 relating to the violation of Public Procurement Rules 2004, loss of Billions of rupees to exchequer with regards to Honorable Court following Order announced on 8th August 2011;

“(ii) Responsibility shall be fixed individually or collectively against the persons responsible for making investment to run the campaign against the judiciary on the electronic media as it has been noted hereinabove. On having determined the particulars of the persons responsible for launching the propaganda campaign against the judiciary what action against him and or them is called for, to maintain the dignity and honour of the Courts”.

1. That in case of the violation of Public Procurement Rules 2004, if the Government of Pakistan incurs any loss on account of **corrupt business practices** under Rule No 7, the “Integrity Pact” signed between seller and NICL, the seller has to pay 10 times the amount of loss to GoP as fine.

Pertinent clause of Integrity Pact is quoted below.

Notwithstanding any rights and remedies exercised by GoP in this regard, [the Seller/Supplier/ Contractor] agrees to indemnify GoP for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoP in an amount equivalent to ten time the sum of any commission, gratification, bribe, finder's fee or kickback given by [the Seller/Supplier/Contractor] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP. (Annex-A).

2. That this act of **Corrupt Business Practices** of Seller is an offence which to be tried under the National Accountability Bureau (Amendment) Ordinance, 1999 (the “NAB Ordinance”), Article 9, as Corruption and Corrupt Practices in sub article (iv), *if he by corrupt,*



dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse and/or dependents or any other person, any property, valuable thing, or pecuniary advantage.

According to NAO 1999, Article 10, Punishment for Corruption and Corrupt Practices is prescribed as under;

A holder of public office, or any other person who commits the offence of corruption and corrupt practices shall be punishable with rigorous imprisonment for a term which may extend to 14 years and with fine and such of the assets and pecuniary resources of such holder of public office or person, as are found to be disproportionate to the known sources of his income or which are acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamindars”.

3. That the other issue is, benamindars have been defined in the NAO 1999, Article 9, Corruption and Corrupt Practices sub article v, *if he or any of his dependents or benamindars owns, possesses, or has any right or title in acquired moveable or immovable property or pecuniary resources disproportionate to his known sources of income, which he cannot reasonable account for.*

4. That in its comments on the NICL reply submitted on the request of the Supreme Court of Pakistan in August 2010, TI Pakistan has requested the honorable court for the recovery of 10 times fine from the Seller s on the loss incurred to GoP under the Integrity Pact also on the two cases of Land purchase by NICL in Lahore, 803 Kanal and 20 Kanal at Airport. (Annex-B). Also in a news published in Business recorder in March 2010 referring to letter of TI Pakistan sent to Makhdoom Amin Fahim, Minister of Commerce the headline was “Integrity pact: TIP urges government to recover Rs 14.5 billion from NICL” (Annex-C).

5. It was therefore in knowledge of Sellers at the time of concluding the deal with NICL in February 2010, 1-1/4 year before the TV Advertisement was telecasted in July 2011, and also media from news reports such as mentioned above, that the violators of Public Procurement Rules 2004 causing loss to GoP has to pay 10 times fine, according to the terms of “ Integrity Pact”, and also that TI Pakistan has requested to the Supreme Court of Pakistan in August/September 2010 for the recovery of 10 times fine under the “ Integrity Pact” from sellers. Relevant paragraphs of TIP comments is quoted below;

“According to the inquiry report of NAB, corruption is proved, and according to “Integrity Pact”, the violators M/s Privileges’ farms, besides criminal indictment on corruption, shall also be considered to pay under Rule No 7, “Integrity Pact” 10 times the amount of corruption as fine, which and in this case as reported by NAB is Rs 1.426 Billion and the total penalty at 10 times may become Rs 14.26 Billion. This fine as per rules is required to



be deposited with the GoP. Similar could be the fine recoverable on the Lahore Commercial property, Karachi Korangi Property and Dubai Liberty House Property purchases, if the court is convinced that corruption has occurred in these deals also."

6. That in the TV Advertisement it was stated (not exactly same words) 'that the deal of one person who sold land to NICL was cancelled, and he returned all money, and was granted bail, and prosecution witnesses gave statements that Moonis Ilahi has no connection in the deal, then where is justice, is it that delay in justice is due to any conspiracy, after all what is the crime of Moonis Illahi, you must also think', from Pakistan Muslim League Lawyers wing.

7. The fact is that recovery of Rs 800 million fine on Airport Land under Rule 7, being 10 times the recovered amount of Rs 80 million overpaid by NICL, (as initially determined by FIA, prior to another Valuation done by NESPAK where the value of land was asses to be less than Rs 502 million than the paid value of Rs 1.065 billion), has been advised by the Auditor General Pakistan in March 2011 and is still to be recovered, which was in knowledge of all including media(Annex-D).

8. That the request of the recovery of Rs 800 million to Dy Director FIA, Lahore by NICL has been made on 29 July 2011. (Annex-E). Actually it shall, be Rs 5.028 Billion, as according to the NESPAK valuation report dated January 2011, submitted in the Supreme Court of Pakistan the land value in 2009 was only Rs 562.50 million against NICL purchased cost of Rs. 1,065.30 million, and the loss to GoP is Rs 502.80 million.

9. That the recovery of 14.26 Billion under the Public Procurement Rules 2004, Rule No 7, Integrity Pact, from the seller of 803 Kanals land, as required under the terms of Integrity Pact is also to be directed by NICL to the FIA to be recovered by NICL from the Sellers, as the NAB inquiry report submitted in the Supreme Court has proved the loss to exchequer of Rs 1.426 billion has occurred on account of this 803 kanals land purchased by NICL (Annex-B).

The above facts/material/documents may be helpful for determining the causes/ background of the alleged TV advertisement .

Yours Sincerely,


Syed Adil Gilani
Advisor