

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Tariq Parvez
Mr. Justice Amir Hani Muslim

**C.M.As.No.874, 1710, 1711 OF 2011, H.R.C.No.678-P OF 2011 AND
CRL.ORG.P.No. 50/2011 IN S.M.C.No.18/2010**

On Court notice : Maulvi Anwar-ul-Haq, AGP.

For NICL : Mr. Saeed Aslam Raja, ED(CS)
Syed Abid Ali Shah, GM.

For Ayyaz Niazi (accused): Mr. Qamar Afzal, ASC.

For M/O Commerce : Mr. Zafar Mehmood, Secretary.

For FIA : Mr. Muhammad Azam Khan, Dir (L)

For the applicants : Mr. Ali Zafar, ASC.
(in C.M.As.No.1710-1711/11) Mr. Mehr Khan Malik, AOR

Respondent : Mr. Zafar Ahmad Qureshi, Former
(in C.M.As.No.1710-1711/11) Addl.D.G, FIA (In-person)

For NAB : Mr. Fauzi Zafar, ADPGA (Absent)

Crl.O.P.No.50/2011

For alleged Contemnors : Dr Babar Awan, Sr.ASC.
Mr. Qamar Zaman Ch. Secy. Interior
Mr. Abdul Rauf Ch. Secy. Estt.Division.
Mr. Khushnood A. Lashari, PSPM.

Date of hearing: 1.7.2011.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. - In response to the notice dated 16.6.2011, Qamar Zaman Ch, Secretary, Ministry of Interior, Abdul Rauf Ch. Secretary, Establishment Division, and Khushnood Lashari, Principal Secretary to the Prime Minister, appeared through their counsel and filed their replies; contents whereof have been perused by us

along with the learned counsel to substantiate their pleas emanating from the replies. In addition to the replies, the learned counsel has formulated the following propositions on which he intends to make his submissions:-

1. Neither there was intention nor any willfull or otherwise defiance was shown to the order dated 24.1.2011, passed by this Court.
2. All actions done by the answering respondents or acts in administrative capacity during the course of official business, no contempt of any order was intended.
3. All actions are covered by the Rules of Business, 1973, particularly by Rules 5, 11A and 15(4).
4. The entire stance of all the three officers is based upon truth and obedience to the competent authority of the Federation.
5. All the three respondents held the dignity of this Court and law above all other considerations and no action is ever taken by them which is detrimental to the administration of justice.

2. The learned counsel has contended that these officers have acted in good faith in discharge of their duties otherwise they have full respect for the Court and or have not violated its orders and directions, in any manner. He stated that today he is busy before another learned Bench of this Court in connection with some important issue, therefore, he needs time to argue the case.

3. We may observe that the stand taken by the learned counsel for the respondents was very fair and candid while making statement that

Government has no interest in the investigation of these cases and whatever has been done, it was unintentional and none of the respondents had any intention to undermine the authority of the Court and or disrupt the investigation of the cases.

4. We have drawn his attention towards para 3 from the replies of the Khushnood Akhtar Lashari, Principal Secretary to the Prime Minister, and Abdul Rauf Ch, Secretary, Establishment Division, which reads *“that a plain reading of FIA’s letter/report suggested that additional charge assigned to Mr. Qureshi in FIA was no longer required otherwise there was no other purpose of this letter at all”*, whereas para 3 of reply of Qamar Zaman Ch, Secretary Ministry of Interior, Islamabad was similar to the aforesaid replies, which reads *“it is clear from the above contents that Ministry of Interior’s letter was only by way of information and there was absolutely no suggestion explicit or implied that Mr. Zafar Ahmed Qureshi be disassociated from the investigation of the NICI case.”*

5. It is to be noted that former DG, FIA, in whose case judgment was reserved on 15.4.2011, had addressed a letter to the Secretary, Ministry of Interior, Government of Pakistan, contents whereof reads as under:-

*“OFFICE OF THE DIRECTOR GENERAL
FEDERAL INVESTIGATION AGENCY
ISLAMABAD*

No.PS/DG/FIA/2011/208

April 15, 2011

*The Secretary, Ministry of Interior,
Government of Pakistan,
Islamabad.*

Subject: NOTIFICATION.

*Kindly refer to your office Notification
No.3/6/2011-Estt (FIA), dated 9.2.2011, in pursuance of the
Notification issued by the Government of Pakistan, Cabinet*

Secretariat, Establishment Division No.F.12/3/81-E-3(Police) dated 24.1.2011 with respect to posting of Capt. (R) Zafar Ahmed Qureshi, (PSP/BS-21) as member of the FIA against the post of Additional Director General/FIA to supervise the investigation of NICL case at Lahore.

2. *It will not be out of place to mention that the interim challans in NICL cases have been submitted in the Court of competent jurisdiction on 11.4.2011 and a report thereof has already been submitted in the Honourable Supreme Court of Pakistan on 14.4.2011 by the said officer.*

3. *The matter is brought to your notice for further necessary action.*

*Sd/-
Malik Muhammad Iqbal, PSP
Director General/FIA”*

6. It seems that in the context of the above letter, reply of the alleged contemnors has been filed and, *prima facie*, they have drawn inference from the above letter as is indicated in the replies of the respondents reproduced hereinabove that Mr. Zafar Ahmed Qureshi, Additional Director General, FIA, was no longer required whereas the cursory glance on the contents of the letter suggests that Malik Muhammad Iqbal, DG, FIA, has written the above letter to bring into the notice the progress of the investigation in the cases for necessary information and has never suggested that Capt. (R) Zafar Ahmed Qureshi was no longer required as has been inferred by them.

7. As all the three officers have requested through their learned counsel for further time, but in the meanwhile, as far as the progress of investigation in the cases relating to the NICL scam is concerned, it was remarkably advanced and accelerated by Capt. (R) Zafar Ahmed Qureshi during the period he supervised the investigation, which resulted in collection of huge amount of Rs.1.74 billions, has come to stand still. Therefore, the officer who had been discharging duties honestly, uprightly

and had shown professionalism in bringing back the looted money should not have been condemned by issuing notification dated 18.4.2011 disassociating him from the investigation in the cases by withdrawing the additional charge of the post of Additional Director General, FIA. An officer conducting honest investigation should have been allowed to continue with the investigation. As the recovery has to be made and final challan is yet to be submitted, therefore, it was another important aspect of the case which should have been noticed before the issuance of aforesaid notification.

8. In view of the importance of the matter, we asked the Attorney General for Pakistan, who is present in Court, that now the case is being adjourned at the request of Dr. Babar Awan, who is busy before another learned Bench and in the larger interest of justice, no one amongst the alleged contemnors has objected to the conducting of investigation by Capt.(R) Zafar Ahmed Qureshi, in terms of the earlier notification dated 24.1.2011 issued by the Establishment Division coupled with the subsequent letter of D.G, FIA to the Government for again associating Capt. ® Zafar Ahmed Qureshi with the investigation as he has not accomplished the job which has been assigned to him and in view of the importance of the case which required investigation to be carried out but has not been completed so far and only interim challan has been submitted, he may not have been disassociated from the investigation. The learned Attorney General admits that he is an honest officer and had carried out the investigation properly and successfully. He, however, has expressed his reservation without cogent reasons.

9. In the facts and circumstances when such like honest and upright officer, who has always upheld the national interest and had taken all risks in performance of his duties should not have been condemned in such a manner by issuance of the notification dated 18.4.2011 by the Establishment Division. We, therefore, suspend the operation of Notification F.No.12/3/81-E-3 (Police) dated 18.4.2011 issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division till further orders. The incumbent D.G, FIA, is directed to extend all necessary assistance to Capt. (R) Zafar Ahmed Qureshi for carrying out investigation of the cases registered at Lahore in respect of N.I.C.L scam and any other matter connected and related thereto in terms of earlier notification dated 24.1.2011 issued by the Establishment Division. No interference of any nature whatsoever shall be caused either by D.G, FIA or by any other authority and he would take over the charge of the investigation of the cases of N.I.C.L scam at Lahore immediately and would be free to take all such steps and adopt all measures in discharge of his duties necessary for conducting transparent investigation. He shall, however, be submitting fortnightly reports to Mr. Justice Amir Hani Muslim in Chambers for perusal.

The case is adjourned to a date in office.

CJ

J

J

Islamabad the
1st July 2011.

APPROVED FOR REPORTING.

Sohail/**