



8th March, 2014
Senator Nayyar Hussain Bukhari,
Chairman Senate,
Senate of Pakistan
Parliament House,
Islamabad,

Sub: NA passes bill to make Bhagwandas new CEC

Dear Sir,

Transparency International Pakistan, refers to the bill passed on Friday 7th March 2014 by the National Assembly the Federal Public Service Commission (Amendment) Bill 2014, as has been reported in media (**Annex-A**), which is contradictory to the Supreme Court Judgment in NRO case, *that the executive and legislative limbs of the State are also constitutionally obliged to apply the powers and resources at their command, in enforcing the Constitution and the rule of law without discrimination or undue favour to any person or class.*

Notwithstanding the integrity, credibility and the experience of Justice (R) Rana Bhagwandas, following facts are being highlighted for the immediate attention of the Chairman and the Senate;

1. After amendment in FPSC Act 2000, ban was imposed on an appointment of any member of the commission in any constitutional or government organization.

2. On 9th July 2013, the leader of the opposition in the National Assembly Syed Khursheed Shah proposed the name of Justice (R) Bhagwandas for the post of Chairman NAB.

3. On 16th July 2013, Finance Minister Ishaq Dar on Tuesday formally informed National Assembly opposition leader Syed Khursheed Shah that Justice (R) Bhagwandas did not fulfill the mandatory criteria for holding the post of Chairman National Accountability Bureau (NAB), since the former judge had recently retired as Chairman Federal Public Service Commission. FM Dar made it clear that the government did not have any question over the credibility and professional reputation of Justice Bhagwandas, only that some legal complications were creating hurdles in considering the retired Supreme Court judge for the position. (**Annex-B**).

4. On 16th June 2013, leader of the Opposition in the National Assembly Khursheed Ahmed Shah of the PPP has decided to drop the name of retired Justice Bhagwandas as of opposition's nominee for the post of National Accountability Bureau chairman. The name of Mr. Bhagwandas, former chairman of the Federal Public Service Commission, has been withdrawn after it was realised that the head of the commission cannot hold any other government office after retirement. "If Mr. Bhagwandas is ineligible for the post I will propose another name," Mr. Shah told Dawn. (**Annex-C**).

5. On 28th November 2013, Daily Pakistan Today reported that both the government and Opposition have agreed to introduce amendments in laws of the Federal Public Service Commission (FPSC) paving a way for appointment of Justice (R) Rana Bhagwandas as new



Chief Election Commissioner (CEC). Sources said that in a meeting between Leader of the Opposition in the National Assembly Khurshid Ahmed Shah and Finance Minister Ishaq Dar both agreed on the name of Bhagwandas. Sources said that directives have been issued to the law ministry for scrapping of the legal impediments to facilitate appointment of new CEC. (Annex-D).

6. On 7th March 2014, the National Assembly (NA) passed the Federal Public Service Commission (Amendment) Bill 2014, with consensus. Federal Minister Zahid Hamid introduced the bill in the House. The minister moved the motion that in order to discuss the Federal Public Service Commission (Amendment) Bill 2014, contents of Rule 122 of the Rules and Procedures be ignored. The National Assembly approved this motion. According to the bill, members of the Federal Public Service Commission (FPSC) will be eligible for joining the civil service of Pakistan after retirement from the commission. The passage of this amendment bill has paved the way for Justice (R) Rana Bhagwandas to be appointed as the Chief Election Commissioner (CEC). The bill has been sent to the Senate. (Annex-A).

Such 'person specific' Law has been stuck down in the NRO case, Constitution Petition Nos. 76 to 80 of 2007 & 59/2009, Judgment released on 19/1/2012.

The Supreme Court decision includes following additional orders of Justice Jawwad S Khawaja, on page 285, para 9.

9. The onus, therefore, of stabilizing the rule of law falls on and must be assumed by the executive organ of the State which also commands a majority in the legislature. This is the requirement of the Parliamentary democratic dispensation ordained by our Constitution. Political stability and the rule of law will flow as a natural consequence of giving sanctity and respect to the Constitution, both in letter and in spirit. The Court can only strengthen the rule of law by upholding the Constitution, which is, in fact, the supreme law. The executive and legislative limbs of the State are also constitutionally obliged to apply the powers and resources at their command, in enforcing the Constitution and the rule of law without discrimination or undue favour to any person or class

The Chairman Senate is requested to uphold the principle of Rule of Law and Supreme Court Judgment in NRO case.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

25
Regards,


Sohail Muzaffar
Chairman

Copies forwarded for information and appropriate action under the mandate vested, to,

1. Secretary to the Prime Minister, for information of the Prime Minister, Islamabad.
2. Registrar, Supreme Court Pakistan, Islamabad

(Annex-A).

The NEWS

NA passes bill to make Bhagwandas new CEC

Senate to give approval on Monday

News Desk

Saturday, March 08, 2014

ISLAMABAD: The National Assembly (NA) on Friday passed the Federal Public Service Commission (Amendment) Bill 2014 with consensus.

Federal Minister Zahid Hamid introduced the bill in the House. The minister moved the motion that in order to discuss the Federal Public Service Commission (Amendment) Bill 2014, contents of Rule 122 of the Rules and Procedures be ignored. The National Assembly approved this motion.

According to the bill, members of the Federal Public Service Commission (FPSC) will be eligible for joining the civil service of Pakistan after retirement from the commission. The passage of this amendment bill has paved the way for Justice (retd) Rana Bhagwandas to be appointed as the Chief Election Commissioner (CEC). The bill has been sent to the Senate, and the Upper House of Parliament will pass it on Monday. Later, the bill will be sent to the president for final approval.

(AnnexB).

THE EXPRESS
TRIBUNE
WITH THE *International New York Times*

Chairman NAB: Rana Bhagwandas technically ineligible, govt tells opposition

By Peer Muhammad

Published: July 17, 2013

ISLAMABAD:

Finance Minister Ishaq Dar on Tuesday formally informed National Assembly opposition leader Syed Khurshheed Shah that Justice (retd) Bhagwandas did not fulfill the mandatory criteria for holding the post of Chairman National Accountability Bureau (NAB), since the former judge had recently retired as Chairman Federal Public Service Commission.

Shah is expected to hold a meeting with Prime Minister Nawaz Sharif this week to discuss the appointment of Chairman NAB. The two leaders would particularly discuss bringing an amendment in the law to pave way for appointing Bhagwandas as Chairman NAB.

Khurshheed Shah had earlier forwarded two names to the Prime Minister: Mohammad Raza Khan and Justice (retd) Bhagwandas, but the government has raised objection to the latter.

Talking to *The Express Tribune*, Shah confirmed that he had a detailed discussion with Dar over the issue on Tuesday. The PPP leader said that he suggested that the clause obstructing Bhagwandas' appointment be removed so that a credible person is appointed as Chairman NAB, in the larger national interest. In principle, Shah said, Dar agreed with my argument but the final decision lies with the Prime Minister.

"If the Prime Minister also agrees with me, then we will amend the clause through an ordinance, which will be rectified within 90 days in the Parliament". He added that there is no harm in removing a clause for the country's good.

Dar asked Shah to hold a meeting with the PM to discuss the issue and finalize a suitable candidate for the post, which is lying vacant since the Supreme Court sent the former Chairman NAB Fasih Bokhari home on grounds that the PPP government did not consult the opposition leader while appointing him as NAB chairman, which is constitutionally mandatory.

Dar made it clear that the government did not have any question over the credibility and professional reputation of Justice Bhagwandas, only that some legal complications were creating hurdles in considering the retired Supreme Court judge for the position.

Published in The Express Tribune, July 17th, 2013

(Annex-C).



Bhagwandas no more PPP nominee for NAB chief post

SYED IRFAN RAZA

Leader of opposition in the National Assembly Khursheed Ahmed Shah.—File Photo

Published 2013-07-12 06:59:42

ISLAMABAD: Leader of the Opposition in the National Assembly Khursheed Ahmed Shah of the PPP has decided to drop the name of retired Justice Bhagwandas as of opposition's nominee for the post of National Accountability Bureau chairman.

The name of Mr Bhagwandas, former chairman of the Federal Public Service Commission, has been withdrawn after it was realised that the head of the commission cannot hold any other government office after retirement.

"If Mr Bhagwandas is ineligible for the post I will propose another name," Mr Shah told Dawn on Thursday.

However, another PPP leader said the party was yet to decide whether to propose another name or stick to its second nominee – retired Justice Sardar Raza.

The PML-N government has proposed the names of retired Justice Rehmat Hussain Jaffery and former federal secretary Khawaja Zaheer Ahmed for the post.

When it was pointed out that Prime Minister Nawaz Sharif was reported to have invited the leader of the opposition for consultation, Khurseed Shah said

he had received no such invitation. "I am waiting for Mr Sharif's call so that the process of meaningful consultation can be started."

Earlier, the PPP had suggested the name of retired judge Mamoon Qazi for the post of NAB chairman but he declined the offer for health reasons.

Mr Shah said the government and the opposition had exchanged two names each for the post but the process of dialogue had not started.

According to the NAB Ordinance, the chairman has to be appointed in consultation with the leader of the opposition. The president appoints the chairman after the prime minister and the leader of the opposition agree on a name.

It has been learnt that the government is waiting for a decision by the Supreme Court on a review petition filed by former NAB chairman retired Admiral Fasih Bokhari whose removal was ordered the court on May 28.

The court issued the order on a petition moved by then leader of the opposition Chaudhry Nisar Ali Khan who contended that no 'meaningful' consultation had taken place between him and the PPP government on the appointment.

The Supreme Court has already ordered 'meaningful' consultations between the government and the opposition.

On July 2, Prime Minister Sharif had sought opinion of the leader of the opposition in order to find a suitable person to head the country's top accountability office.

It is believed that the government will keep its focus on the name of Khawaja Zaheer and the opposition on Justice Sardar Raza.

Earlier, the apex court had declared the appointment of retired Justice Deedar Hussain Shah as NAB chairman illegal on March 10, 2011, on a petition also filed by Chaudhry Nisar.

(Annex-D).

Pakistan Today

FPSC laws to be amended to appoint Bhagwandas as CEC

National

NOVEMBER 28, 2013 BY INP

Both the government and Opposition have agreed to introduce amendments in laws of the Federal Public Service Commission (FPSC) paving a way for appointment of Justice (r) Rana Bhagwandas as new Chief Election Commissioner (CEC).

Sources said that in a meeting between Leader of the Opposition in the National Assembly Khurshid Ahmed Shah and Finance Minister Ishaq Dar both agreed on the name of Bhagwandas.

Sources said that directives have been issued to the law ministry for scraping of the legal impediments to facilitate appointment of new CEC.

It should be mentioned that after amendment in FPSC Act 2000, ban was imposed on an appointment of any member of the commission in any constitutional or government organisation.

The reliable sources added that after meeting between Shah and Dar, Special Advisor to PM Khawaja Zaheer was consulted and later Law Secretary Justice (r) Raza Khan was asked to prepare a legal draft to remove legal obstacle and paving a way leading to appointment of any member of FPSC eligible to hold government or constitutional office. Sources also said that after introducing amendment in the FPSC Act 2000, Shah will propose three names, including that of Bhagwandas.

Justice Tasadduq Hussain Jilani is serving as the acting CEC and government wanted permanent appointment on the slot soon after retirement of Chief Justice Iftikhar Chaudhry.