

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Jawwad S. Khawaja
Mr. Justice Amir Hani Muslim

Suo Moto Case No. 18 of 2010.

(Suo Moto action regarding violation of Public Procurement Rules, 2004 in procurement of billions of rupees of exchequer case by National Insurance Co. Ltd.)

CMAs 1710 & 1711 of 2012 in SMC 18/2010.

(Ch. Shujaat Hussain etc. vs. Zafar Ahmed Qureshi etc.)

CMAs, 2457, 2772 & 3632 of 2012.

(For impleadment of Ayyaz Niazi, Amin Fahim & De-freezing of accounts of M/s Agro Tractors)

HRC No 678-P/2011.

(Application by Syed Zahid Hussain and others)

CrI. O. P. 50/2011 in SMC 18 of 2010.

(Contempt proceedings against Qamar Zaman Chaudhry, Abdul Rauf Chaudhry & Khushnood Akhtar Lashari)

CMA 4821/2011 in SMC 18/2010.

(In the matter of inquiry as per order dated 8.8.2011 passed in SMC 18/2010 regarding NICL Scam)

CMA 2324/12 in SMC 18/2010.

(Inquiry report by Hon: Justice ® Ghulam Rabbani in pursuance of order dated 15.11.2011)

For the applicant (s): Mr. Anwar Kamal, Sr. ASC
Mr. M. S. Khattak, AOR (In CMA 101/11)

Mr. S.M. Zafar, Sr. ASC (absent) (in CMA 3378/10)

Mr. Wasim Sajjad, Sr. ASC (In CMAs. 1710-1711/12)

Mr. Tariq Asad, ASC (absent) (in CMA 2457/12)

Mr. Salman Aslam Butt, ASC (absent) (in CMA 3632/12)

Mr. Arshad Ali Ch., AOR (In CMA.2772/12)

Malik Noor Muhammad Awan, ASC (In CMA 1575/13)

Syed Safdar Hussain, AOR (In CMA 1707/13)

Mr. Anwar Mansoor Khan, Sr. ASC
Raja Abdul Ghafoor, AOR (In CMA 2722-2723/13)

On Court Notice: Mr. Shah Khawar, Addl. AGP.

For FIA: Mr. Qudratullah Marwat, Director, FIA Lahore.
Mr. Basharat Shahzad, Addl. Director, FIA Lahore.
Mr. Altaf Hussain, Addl. Director, FIA, Karachi.
Mr. Jamil Ahmad Khan Mayo, Asstt. Dir., FIA, LHR
Mr. M. Aftab Butt, Asstt. Director, FIA, Lahore.
Mr. Muhammad Ahmad, Asstt. Director, FIA, LHR.
Mr. Khalid Anees, Asstt. Director, FIA, Lahore.
Mr. Mubashar Tirmizi, Asstt. Director, FIA, Lahore.
Mr. M. Sarwar, Inspector, FIA, Lahore.
Mr. Saraj Inspector, FIA, Karachi.

For M/o Commerce: Raja M. Ibrahim Satti, Sr. ASC
Mr. Altaf Hussain, Asstt. Chief.
Mr. Umar Hameed, Dy. Secy.

For NICL: Mr. Nusrat Hussain, Executive Director (ED).
Syed Saad Shah, AED.
Mr. Imran Arshad, DM.

For M/o Finance:
& SECP Nemo.

For M/o Interior: Mr. Nazir Ahmed, DS (FIA)

For respondent (s): Ch. Shujjat Hussain (Absent)
(In CMA 2324/12) Mr. A. Rehman Malik (In person)

Alleged contemnor (s): Qamar Zaman Ch. (In person)
(In CrI.O.P.50/11) Abdul Rauf Chaudhry, (In person)
Khushnood Akhtar Lashari (Absent)

Date of hearing: 05.11.2013

ORDER

Iftikhar Muhammad Chaudhry, CJ.— The case at hand involves issues of corruption and white collar crime. The case was brought to our notice by Transparency International Pakistan (TIP). TIP highlighted violations of Public Procurement Rules, 2004 (PPRA Rules) in procurement of properties in its letter dated 06.05.2010. These violations have allegedly caused losses worth billions of rupees in the span of only six months after appointment of Ayyaz Khan Niazi

as Chairman on 12.12.2009 of the National Insurance Company Ltd. (NICL), which is a public enterprise.

2. It is to be noted that NICL was initially established under the National Insurance Act, 1976, but later it was registered as a Public Limited Company through National Insurance Company (Reorganization) Ordinance, 2000. The major Objectives of NICL are as follows: -

- (a) To provide insurance cover to the Government/Semi Government organizations at economical cost.
- (b) To reduce outflow of foreign exchange by reducing dependence on reinsurance abroad.
- (c) To make significant contributions to public exchequer by payment of taxes & dividends.
- (d) To make prudent investments in public as well as private sector in order to obtain maximum returns.

TIP alleged violations of the PPRA Rules in respect of following transactions: -

- “(1) Procurement of 803 kanal – 19 Marla Plot in Lahore reportedly belonging to Ex-MNA Mr. Habibullah Warraich, which had market value of Rs.300,000/- per Kanal, whereas NICL was buying it at Rs.2,000,000/- per Kanal.
- (2) 27000 sft. Office space in Dubai in Liberty tower was purchased in July 2009 @ UAE Dirham 2,700 per sft., against the market price of AED 1,200 per sq. ft. allegedly causing loss to exchequer of Rs.900 million.
- (3) 10 Acre plot purchased in Korangi Deh Pihai, in August 2009 @ Rs.90,000,000/- per acre, against maximum market price of Rs.20,000,000/- per acre, causing loss Rs.70,000,000/- per acre.
- (4) Award of Contracts of painting works and furniture to M/s Casa Bella Lahore, Karachi for Rs.26.987 million and at Islamabad for Rs.9.31 million, who was not a license holder of Pakistan engineering Council. The tender for Karachi was for 6 floors but the Contractor has been asked to paint only 4 floors.
- (5) Land was purchased in Lahore in the year 2009 from Mr. Mohsin Warraich for Rs.1.5 billion, whose market value was Rs.30 million causing loss to Exchequer Rs.1.2 billion.”

3. The letter of TIP dated 06.05.2010 was registered as Human Rights Case No.18567-S/2010. In the meanwhile, another letter by one Asif Ahmed which was mostly based on the same allegations was received and numbered as HRC No.3379-S/2010. These applications were forwarded for discreet inquiry to National Accountability Bureau (NAB), established under National Accountability Ordinance, 1999 (NAO, 1999). Comments were separately submitted, which *prima facie* revealed that the management of NICL failed to observe the PPRA Rules in purchase of the land at Lahore and Karachi etc. Similarly, reports from the Chief Secretary and the Board of Revenue, Government of Punjab were solicited to ascertain the accuracy of the allegations brought to our notice.

4. Notices were issued to the Chairman NICL vide order dated 27.08.2010 and the case was fixed in the Court on 12.10.2010 and following order was passed:-

"4. In response to notice, Mr. Abdul Hafeez Pirzada, learned senior ASC has appeared along with Mr. Ayaz Khan Niazi, Chairman, NICL and stated that the deal of purchase of 803 Kanals of the land has been cancelled. It is stated that in the meanwhile NAB has also conducted investigation and directed that amount which has been obtained by the seller i.e. Owner of M/s. Privilege Farms Limited, Lahore be frozen and confirmation whereof has also been obtained from the Accountability Court as stated by Mr. Muhammad Akbar Tarrar, Additional Prosecutor General, NAB.

5. We have heard the case at a considerable length during the course whereof it transpired that in respect of the sale of 803 kanals of the land situated at Mouza Toor Waraich, Off Ferozepur Road Tehsil Cantt Distt. Lahore, an amount of Rs.1.6 billion was paid to the seller without first finalizing transfer of the property in the name of NICL by registered sale deed and mutation entries were also not made in its favour, therefore,

prima-facie, we are of the opinion that this transaction itself is sufficient to conclude that the Chairman and other concerned persons are responsible for misappropriation of the money taken out from NICL account which ultimately belongs to Government exchequer and they have indulged into corruption and corrupt practices. However, as far as the remaining allegations noted hereinabove are concerned they are also required to be probed into by the Investigation Agency and the same, too, needs a probe by concerned functionaries under Public Procurement Regulatory Authority Ordinance, 2002 read with the Public Procurement Rules, 2004 as well as criminal law on the subject.

6. In view of above facts, the presence of Secretary, Ministry of Commerce and D.G., F.I.A. was procured. The former candidly admitted that illegalities have been committed in the transactions which are highlighted hereinabove. Therefore, without further commenting on merits lest it may not prejudice the case of any of the parties, the Secretary Commerce is directed that he would immediately lodge the criminal complaint/report with F.I.A. in respect of these transactions against Ayaz Khan Niazi, Chairman, NICL and all other concerned persons. The Director General/Additional Director General, F.I.A. is also directed to register the case against all the concerned persons for misappropriation of public money and indulging in corruption and corrupt practices by following the law accordingly and send a copy thereof to the Registrar of this Court for placing the same on record. The Director General, F.I.A. shall keep the NAB informed of the progress being made in the investigation since it was on the orders of the N.A.B., the accounts of the seller etc. have been frozen with confirmation obtained from Accountability Court. The F.I.A. and the N.A.B. shall finally decide the matters relating to the trial of the accused persons."

5. It is to be observed that NAB has submitted reports pursuant to the directions of this Court on 23.04.2010, 19.05.2010, 25.05.2010, 02.06.2010 and 21.06.2010 passed in Chamber. In this context, directions were issued to DG FIA to keep NAB informed about the progress of the case. NAB ordered the accounts of the seller etc. to

be frozen with confirmation obtained from the Accountability Court. During the course of the investigation two FIRs numbered 24/2010 and 29/2010 were registered at Lahore and one Habibullah Warraich was arrested. Mr. Zafar Ahmed Qureshi, Additional DG FIA, reported that out of total liability of Rs.1,680 million in FIR No.24/2010, an amount of Rs.1,280 million was recovered and the balance amount of Rs.280 million was likely to be recovered by 31.12.2010 as cheques have already been issued by Mohsin Habibullah Warraich. As far as FIR No.29/2010 is concerned, Rs.710 million were recovered.

6. It so happened that despite the fact that Mr. Qureshi effected the aforementioned recoveries, he was transferred from FIA. Upon this, the Secretary Interior was asked to look into the matter on 25.01.2011 when the following order was passed: -

“Ch. Qamaruzzaman, Secretary, Ministry of Interior, Government of Pakistan has placed on record the notification dated 24.01.2011, issued by the Government of Pakistan whereby Capt. (Retd.) Zafar Ahmed Qureshi, Managing Director, National Police Foundation has been appointed as Additional Director General, FIA in addition to his present assignment with immediate effect till further orders to supervise investigation of the NICL case at Lahore.

2. It is to be noted that during the period when he was supervising the investigation and the investigation was likely to make effective progress, he was abruptly transferred on the pretext that after his promotion in Grade 21 he could not continue as a Director over there, but we feel that this device was adopted with a *mala fide* intention otherwise by an identical notification as has now been issued, the authorities could have allowed him to continue with the investigation of an important case, involving a huge public money, which has allegedly been looted.

3. Mr. Zafar Ahmed Qureshi is present. He has explained the progress made by him so far in the investigation of the case. When inquired as to why he is not treating all the accused persons at par because one of the Directors of NICL, Amin Qasim Dada has not been arrested whereas remaining Directors have already been taken in custody of the FIA, he answered that despite his best efforts he was not allowed to do it. He stated that whenever any person is required from Lahore where he is posted as a Director, the needful is done, but when he had gone to Karachi and contacted Moazzam Jah, Director FIA over

there in connection with the arrest of Amin Qasim Dada, Moazzam Jah told him that Amin Qasim Dada used to sit with DG, FIA in his camp office, therefore, how he could cause his arrest. On Court query, the Director FIA, Karachi, who is present, stated that 4-5 days before the registration of the case and after the order had already been passed by this Court, Amin Qasim Dada was present with the DG, FIA. Be that as it may, DG, FIA is equally responsible for not causing his arrest. It seems that instead of allowing his Director to make progress in the case, he is providing shelter to the accused persons; therefore, we direct the Additional Director General, FIA, Zafar Ahmed Qureshi to take all necessary steps for causing his arrest and if on a further probe he comes to the conclusion that the accused is being given shelter by the DG, FIA, then he should proceed against the DG too in accordance with law because no one is above the law. He further explained that all efforts shall be made to explore the possibility as to how the Government money was taken out of the accounts of the NICL, where the same was spent and in whose accounts the same was deposited. In this behalf, he has particularly made reference to the case of M/S Al-Tahoor Co., whose Manager Abdul Maalik has already been arrested and stated during interrogation that the account was opened in Allied Bank Ltd, Airport Road Branch, Lahore in the name of one Adil Manzoor whose name/NIC was used but when said Adil Manzoor was interrogated, he stated that he had no knowledge of the same, but according to the statement of Manager Abdul Maalik, an amount of 22 crores of rupees has been given to Moonis Elahi. According to him, as progress was being made in the meanwhile, he was transferred and made under orders of DG (Waseem Ahmed) to relinquish the charge immediately. Be that as it may, Zafar Ahmed Qureshi has now again been posted as Additional Director General, FIA, therefore, he would be supervising investigation of the case pertaining the persons concerned.

4. Director Moazzam Jah also gave progress report, which does not seem satisfactory as no step has been taken by him as well to cause arrest of the accused persons, who had left the country inasmuch as Amin Qasim Dada, who was available in Karachi and according to his information he was sitting with DG, FIA after passing of order by this Court, he ought to have taken necessary steps to cause his arrest. Similarly, he had taken no steps to recover the amount from the account of Ayaz Khan except making attachment of the property but making no probe in the matter thoroughly fixing the responsibility upon the accused persons, which indicates that the investigation is not being carried out honestly, fairly and properly. However, we may give him another chance to proceed with the matter strictly in accordance with law and submit report on the next date of hearing in this behalf.

5. The Secretary Commerce has stated that he has sent a letter to the Auditor General of Pakistan to conduct special audit of the NICL."

7. In the meanwhile, Mr. Moazzam Jah Ansari, Director FIA Karachi, submitted comprehensive report. The relevant para of the order dated 17.02.2011 highlighting the progress in the investigation in respect of FIRs No.13, 14 and 21 of 2010 registered at Karachi reads as under: -

"2. The matter was registered as HRC. No.3379-S/2010 and vide letter dated 12.02.2010, report was called from Chief Secretary Punjab, who submitted his report on 4.3.2010 stating therein that NICL intended to purchase a piece of land for developing a housing colony at Lahore at exorbitant price to benefit a few persons, who were behind the deal.

3. Vide letter dated 24.3.2010 report was called from Secretary Board of Revenue, Punjab, who in his report dated 2.4.2010 narrated the same answer as was given by the Chief Secretary, Punjab. Thereafter, vide order dated 26.4.2010 the matter was referred to Chairman NAB for conducting discreet inquiry and report. The Chairman NAB, submitted reports dated 19.5.2010, 1.6.2010 and 14.6.2010. In the light of the reports submitted by the authorities, the matter was then registered as SMC No.18/2010 and was fixed before the Court on 12.10.2010.

4. On 12.10.2010, when the matter was taken up in Court as Suo Moto Case, the Secretary Commerce was directed to lodge criminal complaint/report with F.I.A., in respect of above transactions against all concerned, as a result whereof a case FIR No.24/2010 dated 12.10.2010 under sections 409, 420, 109 PPC read with 5(2) PCA was registered with FIA Circle, Lahore. However, this Court feeling dissatisfied with the above proceedings, directed the FIA to accelerate the proceedings; cause arrest of the accused, particularly the influential persons; and to register cases regarding other incidents."

8. As far as the cases pertaining to Karachi are concerned, Mr. Ansari stated that an amount of Rs.100 million had been recovered and property worth Rs.500 million had been seized but the cash is to be managed after putting the property on auction and hopefully after adjustment, the government money shall be recovered from the property which has already been attached.

9. In the meanwhile, Commerce Division had a special audit of NICL conducted. Mr. Zafar Mehmood, Secretary Commerce

appeared with Mr. Farrukh Ahmad Hamdani, DG Commercial Audit and stated that an interim audit report had been submitted to his office which would be available on the next date of hearing.

10. On 14.04.2011, Mr. Zafar Ahmed Qureshi informed us that in respect of recovery of balance amount of FIR No.29 of 2010 amounting to Rs.420 million, post-dated cheques were deposited by one Muhammad Akram Warraich (uncle of Mohsin Habib Warraich) before the learned Special Judge (Central) Lahore. It has been further brought to our notice that these cheques have been dishonoured. Mr. Moazzam Jah on the said date of hearing informed that losses sustained by NICL have mostly been recovered by attaching property or effecting the recovery in cash.

11. In the midst of all this, the DG, FIA, Mr. Waseem Ahmed was transferred and his place was taken by Mr. Malik Muhammad Iqbal. Instead of facilitating Mr. Zafar Ahmed Qureshi in accomplishing the task assigned to him by this Court, Mr. Iqbal wrote a letter dated 15.04.2011 to Secretary Ministry of Interior stating, "...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 11.04.2011 and a report thereof has already been submitted in the Honourable Supreme Court of Pakistan on 14.04.2011 by the said officer. The matter is brought to your notice for further necessary action". The Ministry of Interior, through letter dated 16.04.2011 forwarded said letter to the Establishment Division and the Establishment Division, issued notification dated 18.04.2011 stating therein that "the DG, FIA has intimated that the recoveries have been made and the Chalan submitted in the said case. Therefore, the additional charge

of the officer as Additional Director General, Federal Investigation Agency is hereby withdrawn with immediate effect”.

12. The Court was, *prima facie*, of the opinion that Malik Muhammad Iqbal created obstacles in the investigation being conducted by Mr. Zafar Ahmed Qureshi by sending aforementioned letter dated 15.04.2011. In this manner Malik Muhammad Iqbal had egregiously flouted the orders and direction of this Court. The Court was of the opinion that by disassociating Zafar Ahmed Qureshi from the case, Malik Muhammad Iqbal was effectively committing an obstruction of justice. Therefore, *vide* order dated 10.05.2011, show-cause notice of contempt of Court was issued to Mr. Iqbal under Article 204 of the Constitution read with sections 4 and 5 of the Contempt of Court Ordinance (Ordinance V), 2003 to explain as to why he should not be proceeded against for the for removing an officer who had been successful in implementing the directions of this Court.

13. Malik Muhammad Iqbal, the then DG, FIA submitted the reply of show-cause notice through CMA 1836/2011, wherein he averred that on 29.04.2011, well before the order passing of the order dated 10.05.2011, he wrote to the Secretary, Ministry of Interior specifically requesting that the notification in question may be withdrawn and the earlier notification of 24.01.2011 be restored, “so that Mr. Zafar Ahmed Qureshi may complete the investigation as Member of FIA by adjusting him against the post of Additional Director General FIA in addition to his present assignment”; however, the authority did not accept his request and Mr. Zafar

Qureshi was not transferred back.

14. The Court was not satisfied with the explanation of Malik Muhammad Iqbal. After discussing the case at length, charge was framed against him on 03.06.2011. However, in reply to the charge he submitted that "the undersigned holds the apex court in the highest esteem and respect. I do not want to contest the charge. However, most respectfully I submit that it was not my intention or object to undermine the authority of this Hon'ble Court and subvert its orders/directions. I stand by my earlier statement dated 14.05.2011 submitted through my counsel Mr. Makhdoom Ali Khan. I humbly and respectfully seek mercy and clemency of the august Court and by way of extenuating circumstance I submit that I am superannuating on 14-7-2011 and I shall immediately proceed on leave and not serve".

15. While hearing the contempt proceedings against Malik Muhammad Iqbal, notices to Mr. Qamar Zaman Ch. and Abdul Rauf Chaudhry, Secretaries Interior and Establishment respectively were issued on 16.6.2011 to appear in Court. However, on having taken into consideration the facts and circumstances as well as Rules of Business, 1973 to meet the ends of justice it was found necessary to issue notices under section 17(1) of the Contempt of Court Ordinance (Ordinance V), 2003 to both the Secretaries named hereinabove as well as Mr. Khushnood Akhtar Lashari, the then Principal Secretary to the Prime Minister for willful defiance of the orders of this Court passed on 24.01.2011. Consequently, a separate Criminal Original Petition No.50/2011 was registered

against the above named three officers.

16. In the said situation, the Court vide order dated 01.07.2011, suspended operation of notification dated 18.04.2011 whereby services of Mr. Zafar Ahmad Qureshi were withdrawn as Additional Director General, FIA. The then D.G. FIA was also directed to extend all necessary assistance to him. Strangely, on the same day the members of the investigation team working under the supervision of Mr. Zafar Ahmad Qureshi, namely, M/s Javed Hussain, Dy. Director; Muhammad Ahmad, Assistant Director; Khalid Anees, Assistant Director; and Muhammad Sarwar, Inspector, were transferred to different stations outside Lahore, which also includes Gowadar (Balochistan) by the then DG, FIA.

17. In addition to it, on 02.07.2011, Mr. Qureshi was served with a notice to explain about the news item flashed in the electronic media on 02.07.2011 giving impressions that he had written a letter to D.G. FIA regarding transfer orders of various officers of FIA. After receipt of explanation, Mr. Qureshi was suspended and proceedings were initiated against him vide order 04.07.2011.

18. When the matter came up before this Court on 07.07.2011, the Court passed restraint orders regarding proceedings against Mr. Zafar Ahmad Qureshi and the DG, FIA was directed to reverse the transfer orders of the officers/members of the investigation team of Mr. Zafar Ahmad Qureshi immediately and post them at the places where they were directly performing their duties pending decision of the matter. However, despite restraining order fresh proceedings were initiated against Mr. Zafar Ahmad

Qureshi on the basis of some other notice. As such *vide* order dated 13.07.2011 all notices and communications issued to Mr. Zafar Ahmad Qureshi were suspended and the Secretary Interior/competent authority was restrained from proceeding departmentally against him without prior permission of this Court. On 14.07.2011 it was brought to the notice of the Court that officers/members of the investigation team of Mr. Zafar Ahmad Qureshi had been transferred and posted back to the places where they were performing duties.

19. It is to be noted that during the investigation of cases, Mr. Zafar Ahmed Qureshi approached the Serious Organized Crime Agency (SOCA), UK, through Mirza Sultan M. Saleem, the then Additional Director NCB/Interpol FIA Headquarters, and succeeded in obtaining information from SOCA about the bank account of Moonis Elahi with EFG Private Bank Ltd., having a balance of £ 1.138 million, in the name of a company owned by him and another account in the name of Beenish Khan (wife of Mohsin Habib Warraich) in Barclays Bank with a balance of £ 102,307.63 (transferred from the account in EFG Private Bank Ltd.). This fact has been disclosed in the report submitted in the Court on 25.07.2011 in pursuance of earlier directions made by this Court. The report further indicates that the said amount has been allegedly transferred from NICL transactions. The said fact had also been admitted by the learned Attorney General for Pakistan during hearing of the case.

20. It was reported in print media on 5th and 6th July, 2011

that the suspension of Mr. Zafar Ahmed Qureshi from service was a result of political intervention. Reference may be made to a story published in the News International, wherein it was, *inter alia*, reported that "another source however insisted that the decision to suspend Qureshi had actually been taken in a meeting between Prime Minister Yusuf Raza Gillani, Rehman Malik and Chaudry Pervez Elahi". It was also reported in another story, *inter alia*, that "one of the most powerful Ministers summoned the FIA Additional Director General Zafar Qureshi on Sunday and gave him four options: leave the country immediately; go on a long leave; tell the Supreme Court in writing that he cannot continue with the NICL investigation for personal reasons; and, if all the three are not possible, then bail out Moonis Elahi, the son of the Chaudhry Pervez Elahi, the new coalition partner of the PPP government, the News has learnt". On the next day it was reported, *inter alia*, that "Zafar Qureshi wanted to proceed against the former DG FIA Waseem Ahmed for not cooperating and providing information about the foreign currency accounts of Moonis Elahi, received by the FIA headquarters from Serious Organized Crime Agency (SOCA) UK, which delayed the process from reaching its logical conclusion. Sensing the gravity of the situation as Zafar Qureshi had started expanding his area of investigation former DG FIA, Malik Iqbal stopped him, from further pursuing the matter by expressing his displeasure to Zafar Qureshi and stating that 'under the pretext of investigation, you have started inquiries about the conduct of FIA officers'".

21. In the meanwhile, propaganda was initiated against judiciary on the electronic media. Therefore, on having taken into

consideration the above facts, on 25.07.2011 following order was passed: -

"44. In view of the above facts and circumstances, we hold that: -

- (1) The order dated 4-7-2011 and or any other order, suspending Mr. Zafar Ahmad Qureshi, Additional D.G. FIA from service have been passed to render the judgment/order dated 1-7-2011 ineffective and non-operative. Thus, order dated 4-7-2011 suspending Mr. Zafar Ahmad Qureshi or any other order, is quashed/set aside. He shall be deemed to have been on duty as Additional D.G. FIA pursuant to the order of this Court dated 1-7-2011.
- (2) Mr. Zafar Ahmad Qureshi, Addl. D.G. is hereby directed to carry out investigation of the cases registered vide F.I.Rs. Nos.24, 29 & 46/2010 and 05/2011 etc., forthwith. He shall complete investigation of the cases expeditiously.
- (3) The D.G. FIA, Additional D.G. FIA, Mr. Zafar Ahmad Qureshi and other government authorities shall take steps to ensure that public money sent abroad noted hereinabove, shall be brought back. The D.G. FIA and others shall not create hindrance in the investigation being conducted by Mr. Zafar Ahmad Qureshi, Addl. D.G, under the direction of this Court.
- (4) In pursuance of order dated 13-7-2011 passed by this Court, no action shall be taken against Mr. Zafar Ahmad Qureshi without prior approval of this Court. The investigation team, which had already been assisting him, would join him as, team mates, unless he wants otherwise.
- (5) On having made the order dated 1-7-2011 ineffective, prima facie interference has been made in the judicial functioning of this Court as a result whereof not only the authority of the Court has been eroded but at the same time the investigation of the NICL cases have been badly hampered, resultantly investigation has come to stand still, no progress has been made and looted money, which has been taken outside the country is not likely to come back unless the investigation of the case is conducted seriously and the Government provide support to the prosecution instead of withdrawing its support.
- (6) Mr. Zafar Ahmad Qureshi, Addl. D.G. shall be submitting fortnightly report about the progress of the investigation duly countersigned by the D.G. FIA to Mr. Justice Amir Hani Muslim for perusal in Chambers.
- (7) Prima facie suspension order dated 4-7-2011 of Mr. Zafar Ahmad Qureshi is the result of political intervention in the affairs of this Court and it requires to be determined accordingly in view of facts and circumstances narrated above, which also includes pressurizing Mr. Zafar Ahmad Qureshi by the high-ups to dissociate Him from the proceedings of the cases, as a follow up political expediency,

which has been widely reported by the print media, referred to hereinabove, coupled with propaganda on electronic media against judiciary by issuing advertisements. The private T.V. Channels might have declined to indulge in such campaign but the T.V. channels being operated commercially prima facie can not be blamed, however, the persons or a specific group who have provided finances for this purpose are required to be dealt with in accordance with law.

22. By means of the said order, a one-man Commission comprising Mr. Justice Ghulam Rabbani, former Judge of this Court, was constituted to answer the following questions:-

- (i) Whether before suspending Mr. Zafar Ahmad Qureshi, pressure was exerted upon him by the Interior Minister etc. as it has been reported in the newspapers due to political expediency, if so, to what consequences?
- (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.

23. The Commission submitted its report in a sealed envelop which was opened in Court on 07.06.2012 and was registered as CMA No. 2324/2012 ordered to be made public.

24. It is to be observed that the persons, who had a stake against the fair investigation by Mr. Qureshi, continued their efforts to keep him away from the investigation and made another attempt for the purpose of rendering his efforts ineffective. When the Court insisted on providing him the team which was associated with him earlier, the members of the team were brought back to Lahore but they were sent on leave. Inasmuch as, when Zafar Ahmed Qureshi

after reporting his arrival on 11.08.2011 decided to go to his office at Lahore on 13.08.2011, a night before on 12.08.2011 at about 8/9 p.m. one Khawaja Hammad, Assistant Director, FIA informed him on telephone that he should not go to office because there is a rumor of planting of bomb in the building but despite that he went to office and noticed that building of the FIA was locked although few officers were present inside the building. Nonetheless, despite his best efforts he was not even allowed to enter the building to perform his duties as per the order of this Court. Even the files of the case under investigation were made available to him. Surprisingly, the then DG FIA, who was directed to extend his cooperation to him stated that he had no knowledge about the same. Therefore, the police registered the case under section 25/D/29 of the Telegraph Act r/w sections 182/186 PPC, in Police Station Civil Lines, Lahore. Further, the leaves granted to the Staff attached with Zafar Ahmed Qureshi were cancelled and files were handed over to him to continue the investigation.

25. It is interesting to note that during the period of dissociation of Zafar Ahmed Qureshi from the investigation of case w.e.f. 19.04.2011 to 13.08.2011, an amount of Rs.1.895 million lying in bank account of Agro Tractors Pvt. Ltd. maintained in Al-Barka Bank and an amount of Rs.18.522 million lying in the account of M/s Al-Tahir (Pvt) Ltd. maintained in Allied Bank, which were frozen, *prima facie*, considering the same to be subject matter of FIRs No.29/11, 5/11 and 46/2010, were illegally activated without following the procedure by Zulfiqar Ali, one of the members of the then investigation team with the approval of Waqar Haider, Director FIA. On query, Mr. Waqar Haider stated that accounts were activated on the following

opinion of Zulfiqar Ali: -

"I have gone through the papers. Notice under section 5(5) of FIA Act was given on 30.3.2011 regarding stoppage of M/s Agro Tractor Accounts maintained in Al-Barka Bank Gulberg Branch Lahore being related with case F.I.R. No.46/2010 and 5/2011 of FIA/Circle Lahore. Perusal of the file reveals that the said account has no nexus with the above said case. The I.O has not got regularized the notice from the competent court. Thus, notice has no legal value which can be withdrawn.

If approved, the I.O. maybe directed to withdraw the notice dated 30.3.2011 issued u/s 5(5) of FIA Act."

However, directions were made to bring back this amount forthwith and deposit the same in the accounts noted hereinabove, treating it to be case property. The order was complied with by the concerned authorities.

26. It is interesting to note that one of the accused Moonis Elahi, who was challaned in cases No. 46/2010 & 05/2011, was acquitted of the charge by the Banking Court vide judgment dated 21.10.2011. It seems that against the acquittal, no appeal was filed by the prosecution.

27. At that stage i.e. around 15.11.2011, Mr. Zafar Ahmed Qureshi, attained the age of superannuation and retired. Subsequent thereto, except filing the report by commission comprising Mr. Justice (R) Ghulam Rabbani, no effective proceedings have been made and all the accused persons were released on bail. The accused failed to make payment of balance amount of Rs.420 million as the cheques issued by Akram Warraich, reference of which finds mentioned in the order dated 14.04.2011, were dishonoured and a criminal case under section

489-F PPC was got registered vide FIR dated 20.06.2012, however, he challenged the proceedings before the High Court, where the same are pending.

28. We have heard the learned Additional Attorney General who has appeared on behalf of FIA, Mr. Qamar Zaman Chaudhry, former Secretary Interior (presently holding the post of Chairman NAB), Mr. Abdul Rauf Chaudhry, former Secretary Establishment (now appointed as Federal Tax Ombudsman). Mr. Khushnood Ahmed Lashari has not attended the Court.

29. On behalf of FIA, it is argued that efforts have been made for procuring the attendance of three persons who are outside the country and as far as the persons namely Mohsin Warraich, Javed Shah, Qasim Amin Dada and Khawaja Butt involved in FIRs No.24/2010, 29/2010 and 5/2012 are concerned, they have not been arrested. It has been noted with great concern that Mr. Qudratullah, incumbent Director FIA Lahore, has absolutely no interest in finalization of the cases and he had exhibited reluctant attitude instead of asserting the enforcement of the law for completion of the investigation of the case by causing the arrest of the accused persons, named hereinabove, from within and outside the country, and also to make efforts to ensure the recovery of Rs.420 million as well as to make arrangements for ensuring the return of the money lying in the accounts of accused out side the country especially in UK, in respect whereof a letter dated 26.01.2011 had also been received by FIA from SOCA at the time when Mr. Waseem Ahmed was DG FIA, who reportedly without any authority retained that document in his

possession for some time and perhaps later on shared information about the receipt of the document but no action was taken to retrieve the amount belonging to nation lying in the foreign banks. We may mention that one report dated 18.07.2012 has been submitted, wherein it was stated that no case is made out regarding money laundering against Moonis Elahi, therefore, vide order dated 19.07.2012 this Court observed that for such report no action is called for at that stage.

30. Likewise, despite alleged efforts of Moazzam Jah, Director FIA Karachi, as per reports, one of the accused in Karachi Land Scam Khalid Anwar has not been brought from outside the country.

31. Indifferent attitude of FIA Authorities noted above and other government functionaries i.e. Qamar Zaman Chaudhry, the then Secretary Interior, Abdul Rauf Chaudhry, former Secretary Establishment and Khushnood Akhtar Lashari, Principal Secretary to Prime Minister and others is quite understandable, if same is examined, keeping view the overall circumstances of the case commencing from 19.04.2011 to 13.08.2011, when Mr. Zafar Ahmed Qureshi former Addl. DG, FIA was kept disassociated, in clandestine manner from investigation of case, as it has been noted hereinabove, all possible unauthorized tactics were used to create obstacles to prevent him to conduct investigation transparently, detail whereof is self explanatory.

32. It is to be noted that in the meanwhile, on 24.05.2012 it was informed by Mr. Moazzam Jah, Director FIA that out of the money belonging to NICL an amount of Rs.40.50 million was deposited in the

joint account of the then Commerce Minister Amin Fahim, who later on also obtained an ex-parte degree on 16.6.2012 passed in suit No.793/2011. It is stated that the said Minister got Ayyaz Khan Niazi appointed as Chairman NICL in pursuance of the summary put up before him and subsequent thereto notification of his appointment was issued on 12.12.2012.

33. *Vide* notification dated 07.02.2009 by the Establishment Division on the summary, which was forwarded to it by the Minister for Commerce, Mr. Makhdoom Amin Fahim, *Prima facie* his appointment has been made contrary to the Civil Servants' (Appointment, Promotions and Transfers) Rules, 1973 because for appointment on contract these rules are applicable as it is stated in the summary submitted by Tariq Zubair Khan, Section Officer (Insurance), Ministry of Commerce in the following para: -

"3. The post of Chairman, NICL can be filled from officer of (BS-21/22) or also to be filled in from private sector on contract basis in accordance with the Policy Guidelines for appointments in Autonomous/Semi autonomous Bodies circulated by Establishment Division vide their OM No.6/2/200-R3 dated 6th May, 2000 and amended vide their OM of even number dated 29th April, 2002. The following procedure/criteria laid down by the Establishment Division's vide their OM No.6/2/200-R3 dated 6th May, 2000 as amended time to time for appointment of private person in autonomous/Semi autonomous Bodies on contract basis: -

a) The post should be advertised and selection should be made by Departmental Selection Committee as per the following composition: -

<u>Scales</u>	<u>Composition of the Committee</u>
BS-20 and above	Minister - Chairman Secretary - Member J.S.(Admn) - Member- cum-Secretary

34. One of the most important questions relates to the appointment of Ayyaz Khan Niazi to the post of Chairman NICL, which was lying vacant since 15.12.2008 due to transfer of Mr. Abid Javed Akbar.

35. Mr. Tariq Zubair Khan, Section Officer moved summary on 22.01.2009 wherein he submitted following order of priority of the candidates for appointment as Chairman, NICL: -

- (i) Muhammad Anisul Hussain, (BS-21), Additional Secretary, M/o Commerce;
- (ii) Mr. Naveed Arif (BS-21), Commerce & Trade Group Officer, Ministry of Commerce; and
- (iii) Mr. Muhammad Ayyaz Niazi, Director, Team Lead Pakistan, Deutsche Bank AG, Singapore

The Additional Secretary (Implementation), on the said summary observed that *"a summary for PM to post Chairman NICL is submitted for approval/signature please"*. The Secretary on the said summary observed that *"Minister may see and approve before submission"*. The Minister for Commerce approved the summary on 23.01.2009.

36. In the light of the approval of the Minister for Commerce, the summary for approval of the Prime Minister was prepared on 24.01.2009 by Mr. Suleman Ghani, Secretary Commerce, wherein order above of priority was changed and mentioned as under: -

- (i) Mr. Muhammad Ayyaz Niazi, Director, Team Lead Pakistan, Deutsche Bank AG, Singapore;
- (ii) Mr. Naveed Arif (BS-21), Commerce & Trade Group Officer, Ministry of Commerce; and
- (iii) Muhammad Anisul Hussain, (BS-21), Additional Secretary, M/o Commerce

The said summary was sent to Establishment Division for its onward transmission to Principal Secretary to the Prime Minister. On 07.02.2009 under the signatures of Mr. Ismail Qureshi, the then Establishment Secretary added following paras: -

"7. Out of the panel proposed by the Ministry of Commerce, Mr. Naveed Arif, a BS-21 officer of Commerce & Trade Group has been recently posted as Additional Secretary (Incharge), Ministry of Zakat & Ushr (annexure-I). Moreover, Mr. Muhammad Ayaz Niazi is from private sector and can be appointed as Chairman, National Insurance Company Limited (NICL), Karachi. According to contract policy, appointments on contract have to be made in accordance with Civil Servants (Appointment, Promotion & Transfer) Rules, 1973, which lay down that the post should be advertised.

8. Proposal of Ministry of Commerce contained in para 4 of the Summary read with para 7 above is submitted for kind orders of the Prime Minister."

The Summary was forwarded to Prime Minister's Secretariat where on 10.02.2009, Ms. Nargis Sethi, Acting Principal Secretary to PM informed as follows: -

"9. The Prime Minister has been pleased to approve the appointment of Mr. Muhammad Ayyaz Niazi, as Chairman, National Insurance Company Limited (NICL) on contract basis on standard terms & conditions."

37. It is necessary to examine further the documents available on record, as according to them, Qamar Zaman Chaudhry was the Additional Secretary of the Ministry of Commerce and when the file was placed before him for approval a name out of the panel of three persons, instead of ensuring transparency in appointment to the vacant position of the Chairman NICL through advertisement in newspaper, he forwarded the same for the approval of the Minister of

Commerce, Makhdoom Amin Fahim, as a result whereof the process was tainted with arbitrariness. After approval of the Commerce Minister, the summary was endorsed by Suleman Ghani, Former Secretary Commerce as well as by the Commerce Minister and the Prime Minister approved the same. As a result, Mr. Ayyaz Khan was appointed, although his name was at serial No.3 and the remaining two persons named above were already enjoying the status of BS-21.

38. In his concise statement (CMA 2272/2012), Makhdoom Amin Fahim, the then Minister for Commerce stated that he exercised his powers in a *bona fide* manner as he forwarded the summary to the competent authority hence he committed no illegality. He averred that the process of appointment of Chairman NICL was done by the Ministry in due course (not by himself) in accordance with the Rules of Business. As far as receiving the amount of Rs.4.50 million he explained that his family members had mortgaged their three immovable properties as sureties in Union Bank (presently Standard Chartered Bank) for repayment of loan amount obtained from the same bank. The installments of loan amount were payable by petitioner and his family as per bank schedule but due to loss caused to petitioner and his family in their agricultural crops, they were unable to pay the installments within stipulated time. The Bank Authorities issued several notices to petitioner and implored them to ensure the payment of installment according to schedule. He and his family decided to sell out one of their immovable mortgaged property, in this connection he and his family empowered their Manager namely Ali Hassan Hingorjo to make sale transaction of one of their mortgaged property. Mr. Muhammad Zafar Saleem approached Mr. Ali Hassan Hingorjo and

showed his interest to purchase the Mortgaged Bungalow No.75/1, 25th street Phase 6 DHA Karachi, and after long bargaining they settled the sale transaction. Mr. Zafar Saleem offered to purchase the said Bungalow for sale consideration of Rs.76 millions, and both parties entered into a sale agreement/contract dated 23.01.2009. The vendee at the time of agreement paid Rs.3.5 million as earnest money and the remaining amount was to be paid in accordance with the terms and condition of agreement/contract. Vendee was bound to pay the balance amount within twelve months i.e.22.01.2010 and vendor was to transfer the above property in the name of vendee or his nominee, failing which it was agreed between both parties that the earnest money shall be confiscated and agreement would be terminated and defaulter would pay 10% of total sale consideration amount paid to vendor. In the meanwhile, the bank authorities pressurized the petitioner and his family to repay the full and final loan amount against all properties mortgaged in the bank. Therefore, the vendee Zafar Saleem made the payment of Rs.41 million as part payment of sale consideration through a cheque of Dubai Islamic Bank, which was directly deposited in Standard Chartered Bank in order to settle the loan amount against the mortgaged properties as per terms agreed by the Bank and informed the bank the remaining loan amount would be settled shortly as possible. On the other side, his Manager and vendee mutually agreed that when the remaining sale consideration amount would be paid by the vendee to the Standard Chartered Bank, title of property under sale would be transferred in his favour. Thereafter, Zafar Saleem died in a plan crash in July 2010. Therefore, he approached to the legal heirs of the said vendee to

finalize the contract and he also issued the legal notices through his advocate to the legal heirs of the vendee to perform their part of contract but they failed to abide by the conditions, in light of which suit No.793/2011 for declaration, compensation, damage, cancellation and permanent injunction in the High Court of Sindh was filed and ultimately decree was obtained.

Whereas on the other hand Moazzam Jah, Director FIA has explained as follows: -

"Makhdoom Amin Faheem and his family obtained loans from M/s Standard Chartered Bank detailed out as follows: -

- a) Mrs. Rizwana Amin obtained a loan of Rs.25,064,073/- vide Loan No.MO50523034L in May 2005 by mortgaging Property No.18-A, 1st Sunset Street, DHA Phase II Ext, Karachi. On 30.09.2009, last installment to the tune of Rs.7,997,019.03 was made from the above said cheque of Rs.41 Million (Khawaja Akbar Butt). Presently, the outstanding amount is Rs.31,725,079.39.
- b) Makhdoom Amin Faheem/Makhdoom Jalil uz Zaman obtained a loan of Rs.20,000,000/- vide Loan No.0100925952 in November 2003 by mortgaging Property No.11 A, 2nd Sunset Street, DHA Phase II Ext, Karachi. On 30.09.2009, last installment to the tune of Rs.8,498,231.90 was made from the above said cheque of Rs.41 Million (Khawaja Akbar Butt) and the loan was settled/adjusted.
- c) Makhdoom Amin Faheem/Makhdoom Jalil uz Zaman obtained another loan of Rs.30,000,000/- vide Loan No.MO50527253L in October 2004 on an already mortgaged Property No.11 A, 2nd Sunset Street, DHA Phase II, Ext, Karachi. On 30.09.2009, last installment to the tune of Rs.24,504,750.07 was made from the above said cheque of Rs.41 Million (Khawaja Akbar Butt) and the loan was settled/adjusted.
- d) Mrs. Rizwana amin obtained a loan of Rs.30,000,000/- vide Loan No.MO50523035L in May 2005 by mortgaging Property No.75/1, 25th Street, DHA Phase VI, Karachi. On 15.10.2008, last installment to the tune of Rs.152,114.76 was made. Presently the outstanding amount is Rs.49,436,034.36."

FINDINGS OF FIA

Regarding the appointment of Ayaz Khan Niazi, it appears prima facie that the said appointment was made in

contravention of the Insurance Ordinance, without publication of any advertisement or soliciting applications for such senior post and without conducting the fit and proper test or following any laid down criteria. The biggest question that arises is how his name figured in the summary moved to the Prime Minister for such appointment. Admittedly he had no background of Insurance business and was not such a prominent person wherein some officer could just read about him in the papers and place his name at the top of the recommended list of nominees for such a prestigious appointment. An enquiry being conducted by Secretary Commerce should reveal full facts but so far what has emerged does not absolve the Commerce Ministry from acts of favouritism, which subsequently resulted in financial impropriety and outright indulgence in acts of corruption.

Accused Ayaz Khan Niazi after assuming the charge of chairman of NICL went on a money minting spree including the purchase of 10 Acre land on exaggerated prices (Case FIR No.21/2010 as stated above) causing wrongful loss to public exchequer and corresponding wrongful gain to himself and others.

In the transaction of Rs.41 Million from the account of accused Khawaja Akbar Butt credited into the loan account of Makhdoom Amin Faheem, it has been observed that the arrangement is not as innocent as it looks. Prima facie, the agreement of sale of property is fabricated to hoodwink the authorities. It appears to be a device to justify the landing of a huge sum of money from the accounts of an accused beneficiary of this Mega Scam.

RECOVERY

Against the loss of Rs.487.4 Million caused to public exchequer, an amount of Rs.490 Million has been recovered in the shape of cash and deposited in the accounts of M/s NICL and Mr. Syed Aslam Raja, Executive Director M/s NICL vide his letter dated 21.12.2011 has confirmed that an amount of Rs.490 Million has been transferred in the account of M/s NICL and the entire loss to the Government Exchequer has been recovered. Additionally, properties valuing more than Rs.500 Million have also been attached through Section 5(5) of FIA Act 1974 and confirmed by Honourable trial Court as well.

The Federal Investigation Agency gives an assurance to the Apex Court that FIA has conducted the investigation fairly, on merit and strictly in accordance with law and shall pursue the prosecution in the same manner before the honourable trial Court."

39. As has been pointed out above, NICL was established under National Insurance Act, 1976 but later on converted into Public Limited Company under the National Insurance Company

(Reorganization) Ordinance, 2000. Section 12 of the Ordinance, 2000 provides for the appointment of Directors and Principal Officers, who comply with the criteria envisaged by the said section. According to the stand taken by SECP on the appointment of Ayyaz Khan Niazi as Chairman NICL, the above criteria were not forwarded to it and the Ministry of Commerce got him approved without any involvement whatsoever of the SECP.

40. It has been disclosed that vide SRO No.708(I)/2009 dated 27.07.2009 the process of wide consultation was started for the formulation and sound and prudent management standard containing the 'fit and proper' criteria in terms of section 12 of NICL Ordinance.

41. It seems that after appointment of Mr. Ayyaz Khan Niazi, he is allegedly involved in the scam spreading over billions of rupees. Cases have been registered against him at Lahore and Karachi and at present five persons, whose names have already been mentioned hereinabove, could not be repatriated to Pakistan and according to special audit report of NICL following amounts are recoverable: -

SPECIAL AUDIT REPORT OF NICL-2008-2010
RECOVERABLE AMOUNT AGAINST AUDIT PARAS

Audit Paras	Recoverable amount	Amount Recovered	Outstanding Recovery
A) <u>Suo Moto Case No.18/2010</u>			
1) 20 Kanal-LHR 1065.300	502.800	80.400	422.400
2) 803 Kanal- LHR-1686.300	1686.300	1686.300	Nil
3) 10 Acres –KHI 487.390	487.390	490.000	Nil
B) <u>Recovery from Ex-Chairman</u>			
1) Bonus-2.000	9.082	...Nil... (Legal Notice No.ED(CS)/ 2012/290 dated 11/09/2012 issued)	9.082
2) Rented Accommodation Karachi-7.082			

C) <u>Miscellaneous</u>			
1) Stamp Duty paid against property 803 Kanal agreement 37.049	33.000	Nil	33.000
2) Unjustified expenditure on obtaining legal opinion- 1.475	1.475	Nil	1.475
Total	2720.047	2256.7	436.347

42. As it has been noted in detail, Mr. Qureshi, former Additional Director FIA thoroughly conducted investigation, in pursuance whereof one Moonis Elahi was also involved in FIRs No. 24, 29 & 46 of 2010 and 05 of 2011 under sections 409, 420, 109 PPC read with 5(2) of Prevention of Corruption Act, 1947 etc. and trail of transactions between Mohsin Habib Warraich and him, prima facie proved the use of government money, which had been received from NICL. It has also come to notice of FIA through SOCA who informed to Muhammad Saleem, Additional Director that there were vast amounts of money lying in the accounts of Moonis Elahi, Mohsin Habib Warraich (who is still an absconder) and their family members. Mr. Zafar Ahmed Qureshi was making serious efforts in this regard. However, his services as Additional Director General, FIA were inexplicably withdrawn vide notification dated 18.04.2011, which is reproduced hereinbelow: -

"F. No. 12/3/81-E-3 (Police)
GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION
 * * * * *

Islamabad, the 18th April, 2011

NOTIFICATION

Capt. (Retd) Zafar Ahmed Qureshi (PSP/BS-21) was posted as Additional Director General, Federal Investigation Agency, under Ministry of Interior, in addition to his present assignment as Managing Director, National Police Foundation, to/supervise the investigation of NICL case vide this Division's Notification of even number, dated 24-1-2011.

2. The Director General, Federal Investigation Agency has intimated that the recoveries have been made and the Chalan submitted in the said case. Therefore, the additional charge of the officer as Additional Director General, Federal Investigation Agency is hereby withdrawn with immediate effect.

(Sd.)
(Shahzad Asif)
Section Officer to the
Government of Pakistan"

43. It is pertinent to mention that merely three days before the issuance of the above notification, Malik Muhammad Iqbal wrote a letter dated 15.04.2011 to the Secretary, Ministry of Interior informing him that interim challans had been submitted in the court of competent jurisdiction on 11.04.2011 and a report thereof had already been submitted in this Court on 14.04.2011 by Mr. Zafar Ahmed Qureshi. A perusal of the said letter suggests that there was no occasion for addressing a letter to the Secretary Ministry of Interior, Government of Pakistan, Islamabad because FIA is an independent entity and its affairs are run by the Federal Investigation Agency Act, 1974, a perusal whereof abundantly makes it clear that FIA is an Agency for making investigation regarding certain offences committed in connection with matters concerning the Federal Government and the matters connected therewith. The Federal Government has been authorized to constitute an Agency for inquiry and investigation of the offences specified in the schedule, etc. The Federal Government, except for enjoying superintendence and administration of the Agency, has not been empowered to interfere in the independent and transparent investigation of cases, particularly when there are allegations against any person(s) of corruption or corrupt practices, or covered by any of the provisions of the schedule. In any case, this

letter was not meant for any further corresponding transmission because it is now settled law that investigation/inquiry is required to be conducted independently without any influence/ interference of any third party like Government.

44. Surprisingly, to achieve alleged object of disassociating Zafar Ahmed Qureshi from the investigation by getting him transferred, Mr. Qamar Zaman Chaudhry forwarded the said letter to the Establishment Division, stating therein that "please find enclosed the reference received from the Director General regarding latest position of the investigation in NICL case at Lahore". It seems that Malik Muhammad Iqbal titled this document as 'Notification', obviously with an intention to convey to the Ministry that some notification is required to be issued. It may not be out of place to mention that prior to the appointment of Malik Muhammad Iqbal as DG FIA, Mr. Zafar Qureshi was disassociated from the case but on the intervention of the Court, Mr. Qamar Zaman Chaudhry, who was Secretary Interior at that time, cancelled the notification of his transfer and he was reposted on 24.01.2011 for the purpose of conducting investigation. However, instead of approaching the Court to inquire about his further requirement to investigate the case or to get him relieved by getting Court order, a letter was sent in uncalled haste to the Secretary Establishment, Mr. Abdul Rauf Chaudhry who forwarded the same to the then Prime Minister without sending any summary or apprising him that Mr. Zafar Ahmed Qureshi had been attached with the investigation of the case on the intervention of the Court in order to investigate the allegations of corruption. Admittedly, on 18.04.2011, during night time at about 9/10 pm the above noted notification was

issued, in pursuance of verbal order, and subsequently summary was allegedly got approved on 20.04.2011. It would be appropriate to note its contents for the sake of convenience: -

“SUMMARY FOR THE PRIME MINISTER

Subject: **Withdrawal of additional charge – Capt. (R) Zafar Ahmed Qureshi (PSP/BS-21)**

Ministry of Interior vide their U.O. No.3/6/2011-Estt. FIA, dated 16.04.2011 (Annex-I) forwarded letter No.PS/DG/FIA/2011/2008, dated 15.04.2011 of Federal Investigation Agency (FIA) on the above subject. The FIA correspondence refers to Establishment Division's Notification No.F.12/3/81-E-3 (Police) dated 24.1.2011 (Annex-II) regarding posting of Capt.(R) Zafar Ahmed Qureshi (PSP/BS-21) as member of the FIA against the post of Additional Director General/FIA, in addition to his present assignment as Managing Director, National Police Foundation, so as to supervise the investigation of NICL case at Lahore. It further stated that interim challans in NICL case have been submitted in the Court of competent jurisdiction on 11.04.2011 and a report thereof had already been submitted in the Supreme Court of Pakistan on 14.04.2011 by the said officer, and the matter is brought to the notice of Ministry of Interior for further necessary action. The Ministry of Interior forwarded the FIA's letter to the Establishment Division for further necessary action. Subsequently this Division was verbally informed that the required recoveries have already been affected from the accused persons.

2. In view of the position and in pursuance of the directions of the Prime Minister's Secretariat (Public), the additional charge of Capt.(Retd) Zafar Ahmed Question (PSP/BS-21) as Additional Director General Investigation Agency, has been withdrawn with immediate effect. A Copy of notification is at Annex-III.

3. Position in preceding paras is submitted for confirmation of orders of Prime Minister's Secretariat.

(Abdul Rauf Chaudhry)
Establishment Secretary"

It is to be noted that there was no such urgency to obtain order of his transfer on 18.04.2011 during night time at 9/10 pm and in this behalf no explanation has been put forward. Similarly, reference of obtaining verbal order normally is pressed into service where there is acute

urgency and without getting transfer order there is likelihood of receiving serious threat to national security etc. otherwise Rule 5 (11A) of the Rules of Business, 1973 is sufficient to rebut the contention raised by him according to which if there is an urgency and it is not possible to obtain written confirmation of the orders before initiating action, the functionary to whom the verbal orders are given shall take the action required and at the first available opportunity, obtain the requisite confirmation while submitting to the issuing authority a report of the action taken by him. Thus, it is held that in future as well, the concerned authorities are required to follow the Rules of Business strictly, particularly, relevant clause referred and discussed herein above.

45. Mr. Khushnood Lashari, Principal Secretary to the Prime Minister has taken the stand that the plain reading of FIA's letter/report dated 15.04.2011 addressed to the Secretary Interior, forwarded to Establishment Division, suggested that additional charge assigned to Mr. Zafar Ahmed Qureshi in FIA was no longer required otherwise there was no other purpose of that letter at all. And that in furtherance of the said letter, he only conveyed to Establishment Secretary the directions of the competent authority that necessary notification be issued. Accordingly, notification was issued and the confirmation of the verbal orders of the competent authority was obtained in terms of rules 5(11-A) and 15(4) of the Rules of business, 1973 which cater for implementation of verbal orders of the competent authority first and later obtaining the confirmation thereon. As such, according to him, he never defied the orders of this Court by any action verbal or written. All actions taken by him were done in good

faith, keeping in view the dignity of the Court and in accordance with Rules of Business.

46. It is pertinent to note that the mandatory provisions of rule 5(11A) of the Rules of Business, 1973 have been completely ignored by the aforementioned persons. The said Rule provides that, "Verbal orders given by a functionary of the Government should as a matter of routine be reduced to writing and submitted to the issuing authority. If time permits, the confirmation shall invariably be taken before initiating action. However, in an exigency where action is required to be taken immediately or it is not possible to obtain written confirmation of the orders before initiating action, the functionary to whom the verbal orders are given shall take the action required and at the first available opportunity obtain the requisite confirmation while submitting to the issuing authority a report of the action taken by him."

47. It would not be out of context to note that Malik Muhammad Iqbal filed reply through CMA No. 1836/2011, in response to contempt notice. Relevant paras therefrom are reproduced hereinbelow: -

5. It is most respectfully submitted that this letter was not written either to procure or seek the transfer of Capt (R) Zafar Ahmed Qureshi or to have him relieved of the additional charge as Additional Director General Federal Investigation Agency.

6. It may further be stated that in the said letter all that was stated merely by way of information was, "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 Hon'ble Supreme Court of Pakistan on 14.4.2011 by the said officer." This was a mere narration of facts. No request was made in this letter or otherwise by me to have Mr. Qureshi relieved of his duties as an Additional Director of the Federal Investigation Agency investigation the NICL cases.

7. That on receipt of this letter the Additional Secretary, Ministry of Interior by his letter of 16th April, 2011, informed the Establishment Division about the receipt of this letter and, to the best of my understanding regarded it simply as a communication "regarding the latest position of investigation in NICL case at Lahore". A copy of this letter is ANNEX "B".

8. That in its notification of 18 April 2011, ANNEX "C", the Establishment Division, Cabinet Secretariat, Government of Pakistan observed that I have "intimated that the recoveries have been made and the Challan submitted in the said case." The Establishment Division, according to it, therefore, "withdrew the additional charge of the officer as Additional Director General, Federal Investigation Agency...."

9. That it is most respectfully submitted that there is a significant difference between a "Challan" and an "Interim Challan". The former expression may mean a final challan but the latter expression does not. It is also clear that while an investigation may come to an end on the submission of a final challan it does not terminate on the submission of an interim challan. I had, therefore, used the cautious and correct latter expression in my letter of 15th April, 2011, and had not used the former expression. It is submitted that the Establishment Division has incorrectly attributed the use of the expression "Challan" to me. I never used this word.

10. It is also humbly and most respectfully stated that I had not used the words, "recoveries have been made: in my letter of 15 April, 2011. Even a cursory glance at my letter of 15 April, 2011 will make it abundantly clear that I had not used these or even any similar words. These words have been incorrectly attributed to me by the Establishment Division, for reasons best known to it.

11. I also voluntarily state that I had not used these words in any other communication, either verbal or written, in respect of this matter. Being a senior officer and being fully conscious of the sensitivities of this case I could not have dared use such loose and incorrect expressions.

12. On 29 April, 2011, well before the order passed by this Hon'ble Court on 10 May 2011, I wrote to the Secretary, Ministry of Interior specifically requesting that the notification in question may be withdrawn and the earlier notification of 24 January, 2011 be restored, "so that Mr. Zafar Ahmed Qureshi may complete the investigation as Member of FIA by adjusting him against the post of Additional Director General FIA in addition to his present assignment."

13. That on 5 May, 2011 in its letter, ANNEX "D: addressed to the Secretary, Establishment, the Ministry of Interior endorsed my request and attached another copy of it with this letter."

48. This reply was considered unsatisfactory. On 3.06.2011 charge was framed against him, who replied as follows: -

"Respectfully submitted that the undersigned holds the apex court in the highest esteem and respect. I do not want to contest the charge. However, most respectfully I submit that it was not my intention or object to undermine the authority of this Honourable Court and subvert its orders/directions. I stand by my earlier statement dated 14.5.2011 submitted through my counsel Mr. Makhdoom Ali Khan. I humbly and respectfully seek mercy and clemency of the August Court and by way of extenuating circumstance I submit that I am superannuating on 14.7.2011 and I shall immediately proceed on leave and not serve."

49. Arguments were heard in contempt case but judgment was not announced until the proceedings against Qamar Zaman Ch, Secretary, Ministry of Interior; Abdul Rauf

Chaudhry Secretary, Establishment Division; and Khushnood Lashari, Principal Secretary to the Prime Minister, for willful defiance of the orders of this Court passed on 24.1.2011, were not completed.

50. The details noted hereinabove furnish sufficient ground to hold that the conduct of Mr. Qamar Zaman Chaudhry, Abdul Rauf Chaudhry and Khushnood Akhtar Lashari was a *prima facie* violation of section 17(1) of the Contempt Of Court Ordinance, 2003.

51. There is another important question. This Court tried to ensure that FIA should conduct investigation in NICL scam honestly through an independent officer but attempts were made to abort all such efforts. Thus, this Court had to exercise jurisdiction in the light of the law laid down in a number of judgments wherein it has been held that this Court is not debarred from ensuring fair investigation of the case, without any other intention except with object to bring to book the persons who were involved in corruption and corrupt practices, whosoever or how influential he may be, without any discrimination. Reference may be made to the case of Vineet Narain v. Union of India

(AIR 1998 SC 889), commonly known as 'Jan Havala case', wherein the Court observed as under: -

"8. The sum and substance of these orders is that the CBI and other Governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would and the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive. This was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of "continuing mandamus"."

52. This principle has also been followed in the case of Bank of Punjab v. Haris Steel (PLD 2010 SC 1109), wherein it was observed that not only a colossal amount of money and property belonging to a large section of the public but the very existence of the Bank of Punjab was at stake. Thus, it was not only the right of the Court but in fact its onerous obligation was to intervene to forestall the assault on the said fundamental right to life and property of the public. In yet another case Watan Party v. Federation of Pakistan (PLD 2012 SC 292)

following the above principle this Court constituted a commission to inquire into the authenticity of a memorandum which allegedly affected the sovereignty, independence and security of Pakistan and to determine civil and criminal liability based on forensic evidence and other material.

53. The actions of public servants who abet corruption are countenanced generally by sections 34, 107, 108, 109 and 119 of the Pakistan Penal Code, 1860 (PPC) and specifically by section 9(a)(vi) of NAB Ordinance, 1999. Section 34 of the PPC deals with the commission of crimes by more than one person with a common intention and the other sections deal with the liability for abetment of crimes. Section 119 deals with public servants who facilitate the commission of offences which it is their duty to prevent. In this regard it is useful to refer to the definition of "public servant" as given in the case of P. V. Narasimha Rao v. State (AIR 1998 Supreme Court 2120): "A public servant is any person who holds an office by virtue of which he is authorised or required to perform any public duty." The jurisprudence of the mentioned sections of the PPC are helpful in addressing the legal questions in the instant case, but it must be kept in mind that according to section 3 of the NAB Ordinance, "The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force." Therefore, with due deference to the maxim *lex specialis derogate legi generali* (special law derogates general law), it is section 9(a)(vi) of NAB Ordinance, 1999 that is squarely applicable in the instant case. The said section reads as under:

“Section 9 (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices-

(vi) if he misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempts to render or wilfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority...”

It is clear from the words “or renders or attempts to render or wilfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour” that section 9(a)(vi) covers crimes committed with a common intention as well as abetment.

54. The liability of those who abet in the commission of crimes and commit crimes with common intention has been dilated upon in the cases mentioned hereinbelow:

1. Muhammad Ali v. The State (PLD 2004 Supreme Court 667)

“5. It is worth mentioning here at this juncture that the alleged offence and its mode of commission fall within the ambit of "white collar crime" which has its own salient features and peculiar characteristic and therefore, a line of distinction is to be drawn between an ordinary offence and that of a "white collar, crime' which is to be kept in view while evaluating the evidence and approach for such evaluation must be dynamic so that conjectural presumptions and hyper technical hitches having no nexus with the merits of the case could be eliminated.

6. The inspection of the spot where new telephone is to be installed and testing of new installation are required to be done by the SDO and Engineering Supervisor. It would be too much to hold that only the Lineman is responsible for all what had happened as pressed time and again by the learned counsel. It must not be lost sight of that Lineman figures in after receiving the advice slip and he has nothing to do with the technical

aspects of the said installation. The feasibility report could not have been prepared without having examined the premises, physical inspection and other technical aspects concerning installation of new telephones. The feasibility report was found signed by Muhammad Amim, SDO and Karamat Hussain, Engineering Supervisor but the new installations were not installed in the premises where it should have been done. This was also in contravention of the advice slip which resulted into a huge loss worth whereof runs into millions as the fake subscribers could not be traced out subsequently by whom such telephones were used but payment of the bills was never made."

2. Abdul Khaliq v. The State (2006 SCMR 1886)

"5. ...The common intention contemplated [section 34] is anterior in time to the commission of the crime, and does not refer to the time when the act is committed. The Privy Council has held that it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on anyone of the persons in the same manner as if the act were done by him alone. 'Common intention' within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. It is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case. Same or similar intention must not be confused with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if overlooked, will result in miscarriage of justice. The inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. Common intention does not mean similar intention of several persons. To constitute common intention it is necessary

that the intention of each one of them be known to the rest of them and shared by them...

6. After having gone through almost entire law qua the provisions as contained in section 34, in our considered view the following are the prerequisites of the section 34 before it could be made applicable:

(a) It must be proved that criminal act was done by various persons.

(b) The completion of criminal act must be in furtherance of common intention as they all intended to do so. '

(c) There must be a pre-arranged plan and criminal act should have been done in concert pursuance whereof.

(d) Existence of strong circumstances (for which no yardstick can be fixed and each case will have to be discussed on its own merits) to show common intention.

(e) The real and substantial distinction in between 'common intention' and 'similar intention' be kept in view."

3. Muhammad Irshad v. Muhammad Bashir Goraya (2006 SCMR 1292)

"18. It may be noted that there is distinction between the 'abetment' and 'conspiracy'. As far as 'abetment' is concerned, it is punishable as provided for the original offence, charged against the principal accused, falling within the mischief of section 109, P.P.C.; whereas 'conspiracy' itself is an offence and person can be separately charged with regard to 'conspiracy'. In this behalf in State of Andhra Pradesh v. Kandimalla Subbaiah (AIR 1961 SC 1241) it has been held that "there may be an element of abetment in conspiracy; it is something more than an abetment". Whereas 'criminal conspiracy' has been defined in Halsbury Laws 4th Edition, Vol.11, para.58, page 44 as 'conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment of which is imprisonment or fine or both in the discretion of the Court".

4. In re corruption in Rental Power Plants (2012 SCMR 773):

"81. ...all the Government functionaries, including the Ministers for Water and Power holding charge from 2006 and onward up to 2008 during whose tenure the RPPs were approved/set up, prima facie, violated the principle of transparency, therefore, their involvement in getting financial benefits out of the same by indulging in corruption and corrupt practices cannot be overruled in view of the discussion made hereinabove. Consequently, they are liable to be dealt with under the National Accountability Ordinance, 1999 by the NAB."

5. Jawed Iqbal Bokhari v. NAB (PLD 2003 Lahore 669)

"27. In his capacity as a senior civil servant and later as the Incharge of the Cooperative Societies, during the crucial period, he could exact obedience and in return he allowed malpractice to take place with impunity, and we have seen the destruction of the Cooperative movement in this part of the world because of the complicity of the corrupt private sector and the corrupt official sector and which resulted in the bankrupting of the Societies after the general loot. People are to this day crying for refund of their dues..."

34. In a White Collar Crime, there is planning for a considerable time where people are cultivated and are bribed indirectly and often obliquely so that they would be of use at a time when they were needed.

41. NAB Ordinance has an overriding effect over other laws as we see section 3 of the Ordinance. This is a special law which came into being for purposes reflected in the preamble. As it had an overriding effect, all cases involving abuse of power and default in payment of outstanding amounts due to financial institution were brought within its ambit for proceeding in a criminal Court."

6. Ashfaq Baig v. The State (PLD 2004 Karachi 353)

"24. A perusal of [section 9(vi), NAB Ordinance] shows that following are the ingredients, constituting offence under this provision: -

- (a) A holder of a public office, or any other person misuses the authority;
- (b) so as to gain any benefit or favour for himself or any other person;
- (c) renders or attempts to render or willfully fails to exercise his authority;
- (d) to prevent the grant or rendition of any undue benefit or favour which he could have prevented by exercising his authority.

The language of the provision is very clear and free from any ambiguity. The first ingredient is the misuse of authority. However, it is not unqualified which is indicated from the use of expressions immediately following, "so as to gain any benefit or favour for himself or any other person". Thus, the misuse of authority simpliciter, may entail to a disciplinary action under the respective efficiency and disciplinary rules by way of an administrative/executive action but shall not constitute an offence under Section 9(a)(vi) of the NAB Ordinance, until unless the misuse of authority is with intention/purpose to gain any benefit or favour for himself or any other person or is directed in this behalf. Here we will hasten to add that it is not necessary that the misuse of authority should necessarily result into gain, benefit or favour for the person exercising the authority or any other person but it would amount to an offence even, if the misuse of authority is rendered or there is an attempt to render towards the gain, benefit or favour. This intention is manifested with the use of words "render or attempt to render". Now we come to the second part of the subsection which provides that if any person wilfully fails to exercise its authority to prevent the grant or rendition of any undue benefit or favour, which he could have prevented by exercising his authority, it would amount to commit corruption and corrupt practices. It means that in the second part also mere inaction or failure to exercise the

authority in deviation or even violation of any administrative policy decision instructions, rules or regulations, per se, would not be a criminal offence under this provision but shall become so if the failure or inaction on the part of any person results into rendition of any undue benefit or favour which that person could have prevented by exercising his authority or any grant could have been prevented but was not so prevented for want of action on the part of the person concerned and on account of omission of exercise of authority. There are two parts of the provision contained in Section 9(a)(vi) of the NAB Ordinance. First, resulting from an action on the part of holder of public office or any other person and, second, on account of omission on the part of such person, the sine qua non, is that such action is with the intention/purpose and in direction towards any gain, benefit or favour for such person or any other person and rendering of misuse of authority or an attempt to render the misuse of authority is necessarily towards the gain, benefit or favour for the person exercising authority or any other person. Likewise the omission, failures or inaction in exercise of the authority should be such that in the event of exercise of authority, the grant or rendition of any undue benefit or favour could have been prevented. Thus, the intention of Legislature is very clear that in order to constitute an offence under Section 9(a)(vi) of the NAB Ordinance, the necessary ingredient is the intention or purpose to gain any benefit or favour for such person or any other person and the inaction/omission is also in the same direction.

7. Muhammad Farooq Maan v. Director-General, Anti-Corruption
(2010 PCr.LJ 997)

"14. ...it is pertinent to say that said petitioner was also member of the Committee as Deputy Secretary (Properties) and as such, he should not have been a silent spectator, rather he being the person dealing with property affairs, prima facie was the person pointing out the properties subject-matter of these F.I.Rs. When apparent illegalities were being committed, he

should have recorded his separate objections, if at all he was not party to the deeds of other members. His silence alone is sufficient to hold that he had shared the common intention and thus he cannot be singled out at this stage."

The principles applied in the aforementioned cases were also applied by the Supreme Court of India in *inter alia* Central Bureau of Investigation v. V. C. Shukla (AIR 1998 Supreme Court 1406) and Krishna Govind Patil v. State of Maharashtra (AIR 1973 Supreme Court 1388). Therefore, it is abundantly clear that public servants who have a duty to ensure transparency yet they abet the commission of corruption by allowing acts which it is their duty to stop should be proceeded against under section 9(a)(vi) of the NAB Ordinance, 1999.

54. It is also pertinent to deal with the violations of the PPRA Rules that are evident from the above discussion. It is now well-documented how this Court has been ensuring the enforcement of the PPRA Rules. The PPRA Rules have put the developed common law of public procurement on a statutory footing to ensure that State largesse is dispensed keeping in view the cardinal principle of avoiding excessive and wanton expenditure of public money. A violation of these rules is a clear indication of corruption. From the above discussion and the documents placed on record, it is patently clear that open competitive bidding did not take place nor was the lowest bid accepted by NICL in the transactions highlighted in this case.

55. In the circumstances explained above, it is established that the order dated 24.01.2011 in pursuance whereof notification was issued on 18.04.2011 allowing Zafar Ahmed Qureshi to discharge his functions as Additional D.G. FIA for completing investigation of cases

registered at Lahore. There can be no two opinions that corruption and corrupt practices were being committed from day one i.e. when summary was sent for the appointment of Ayyaz Khan Niazi, which resulted in all the criminal deeds, actions, omissions and commissions. Had Ministry of Commerce adhered to Civil Servants (Appointment, Promotion and Transfers) Rules, 1973 i.e. if at all Ayyaz Khan Niazi had to be appointed instead of two other Government officers of BPS-21, namely, Muhammad Anisul Hussain and Mr. Naveed Arif through publication and SECP had conducted fit and proper test under section 12 of the National Insurance Ordinance, 2000, there were all possibilities to avoid corruption and corrupt practices and misappropriation of billions belonging to public exchequer.

56. It would not be out of place to mention here that corruption is a particularly iniquitous malady that has plagued Pakistan even before its inception. We as a nation have utterly failed to adhere to the counsels of our incorruptible Quaid-e-Azam Muhammad Ali Jinnah, who in 1945 wrote a letter to Mirza Abol Hassan Ispahani wherein he stated, "Corruption is a curse in India and amongst Muslims, especially the so-called educated and intelligentsia. Unfortunately, it is this class that is selfish and morally and intellectually corrupt. No doubt this disease is common, but amongst this particular class of Muslims it is rampant." This elite class of Muslims continued to survive and thrive in the newly created State of Pakistan. This elite class has seen fit to devour the meagre resources of our poverty-stricken country to meet their own ends; to live in callous decadence while the vast majority of the population remains in a condition of indigence and squalor. There cannot be a more flagrant

example of exploitation; a violation of Article 3 of the Constitution, which reads, "The State shall ensure the elimination of all forms of exploitation and the gradual fulfilment of the fundamental principle, from each according to his ability to each according to his work." Indeed, the renowned British philosopher Edmund Burke was correct when he stated, "Among a people generally corrupt, liberty cannot long exist."

57. It is particularly pertinent to note how Quaid-e-Azam referred to corruption as a disease. Corruption has been referred to in the sense of a physiological sickness ever since the time of Plato, who in his *magnum opus* "*The Republic*" referred to corruption as a disease that may strike a person or a city-state in a metaphorical sense. The Greek historian Plutarch also equated corruption with physical sickness, stating that moral and political corruption struck ancient Sparta like a disease. (*The Life of Agis*) We recently dilated upon how corruption is akin to disease in *Suo Moto Case No. 15 of 2010 (Corruption in Pakistan Steel Mills Corporation)* (PLD 2012 Supreme Court 610) wherein we referred to the decision of the Supreme Court of India in *State of Madhya Pradesh v. Ram Singh* (AIR 2000 Supreme Court 870) which also characterised corruption as a plague, "Corruption in a civilized society is a disease like cancer, which if not detected in time is sure to malign the polity of country leading to disastrous consequences. It is termed as plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS being incurable. It has also been termed as Royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own

weight. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage unless nipped in the bud at the earliest."

58. Transparency International (TI) conducts a ranking of the countries with the most and least corrupt administrations, called the Corruption Perception Index. According to TI, "The CPI scores and ranks countries/territories based on how corrupt a country's public sector is perceived to be. It is a composite index, a combination of surveys and assessments of corruption, collected by a variety of reputable institutions. The CPI is the most widely used indicator of corruption worldwide. Corruption generally comprises illegal activities, which are deliberately hidden and only come to light through scandals, investigations or prosecutions." The lower the ranking, the more corrupt the country's administration is. Pakistan's ranking over the years is given in the following table:

Year	Ranking
2012	139
2011	134
2010	143
2009	139
2008	134
2007	138
2006	142
2005	144
2004	129
2003	92
2002	77
2001	79

The aforementioned rankings of TI paint a bleak and dismal picture. Corruption in Pakistan is akin to a cancer which is metastasising; growing larger year by year at an alarming rate. The roots of corruption are only ingratiating themselves deeper and deeper in this country's moral fabric as the days pass. We as a nation, however, are content to be enslaved to this Hydra, with no Heracles in sight. In this regard, the Bible states, "They promise them freedom, but they themselves are slaves of corruption. For whatever overcomes a person, to that he is enslaved." (Bible, 2 Peter 2:19) Governments come and go, but corruption is the one constant that not only remains but increases in magnitude. The majority of our population call themselves Muslims and proudly claim to be denizens of the Islamic Republic of Pakistan. Some even go as far to claim that Pakistan is the "citadel of Islam", but we fail to follow the most basic of the religion's moral tenets. Allah has commanded in the Holy Quran, "And eat not up your property among yourselves in vanity, nor seek by it to gain the hearing of judges [and rulers] that ye may knowingly devour a portion of the property of others." (Al-Quran, Surah al-Baqarah, Verse 188, translated by Mohammed Marmaduke Pickthall)

59. The above discussion persuades us to hold as under: -

- (a) That appointment of Ayyaz Khan Niazi was contrary to section 12 of the Insurance Ordinance, 2000 and rules framed thereunder, as non-transparent, illegal and unwarranted. Thus, except one of the officers (Tariq Zubair Khan, Section Officer), all others i.e. Qamar Zaman Chaudhry, the then Additional Secretary; Suleman Ghani the then Secretary Commerce; Makhdoom Amin Fahim, the then Commerce Minister; Ismail Qureshi, the then

Secretary Establishment; and Ms. Nargis Sethi, the then Acting Principal Secretary to Prime Minister are involved in his appointment and, *prima facie*, are liable to be dealt with under section 9(a)(vi) of the National Accountability Ordinance, 1999 [as amended by National Accountability Bureau (Amendment) Ordinance, 2002] on account of NICL scam pertaining to Punjab (Lahore) and Sindh (Karachi) where allegedly offences of corruption and corrupt practices have been committed;

- (b) The notification dated 18.04.2012 transferring Zafar Ahmed Qureshi, Director FIA, *prima facie*, also involves Malik Muhammad Iqbal, former DG, FIA; Qamar Zaman Chaudhry, Abdul Rauf Chaudhry and Khushood Akhtar Lashari (former DG, FIA, Secretary Interior, Secretary Establishment and Principal Secretary to Prime Minister respectively) as well as Waqar Haider, the then Director FIA, Lahore, as they created hurdles and hampered the smooth and transparent investigation entrusted to Mr. Zafar Ahmed Qureshi in NICL scam, pertaining to Lahore. Thus, *prima facie*, they are also required to be dealt with under section 9(a)(vi) of NAO, 1999 as they wrongly exercised their authority to benefit Ayyaz Khan Niazi and others from public money, which has been looted through non-transparent transaction from NICL;
- (c) On account of transfer of Zafar Ahmed Qureshi an amount of Rs.420 million due against Mohsin Habib Warraich and others could not be recovered. Likewise, another huge amount has been deposited by the accused persons in bank account of Moonis Elahi with EFG Private Bank Ltd., London having a balance of £1.138 million, in the name of a company owned by him and another account in the name of Beenish Khan (wife of Mohsin Habib Warraich) in Barclays Bank London with a balance of £0.102 million, had not been recovered;

- (d) FIA after transfer of Zafar Ahmed Qureshi failed to retrieve the outstanding amounts which were frozen, but were illegally activated without following the procedure, during the period he remained disassociated from the investigation of the case w.e.f. 19.04.2011 to 13.08.2011. Therefore, Chairman NAB is directed to have all these cases transferred on his file and proceed in accordance with law, take necessary steps to effect recovery of outstanding amount noted above and also effect the arrest of Mohsin Habib Warraich, Amin Qasim Dada, Khalid Anwar, etc., as early as possible;
- (e) M/s Qamar Zaman Chaudhry and Abdul Rauf Chaudhry have been found liable for contempt of Court vide order 16.06.2012. The plea put forward in reply to show-cause notices under section 17(1) of the Contempt of Court Ordinance, 2003 read with Article 204 of the Constitution, are hereby turned down and proceedings are postponed to frame charge against them, for a date to be fixed by the office;
- (f) Khushnood Akhtar Lashari, though filed reply of show cause notice for contempt of Court but had not appeared in Court, therefore, proceedings against him be kept pending and process be repeated against him to appear in the Court;

60. The Suo Motu Case 18 of 2010 stands disposed of along with miscellaneous applications, whereas, Criminal Original Petition No.50 of 2011 against Qamar Zaman Chaudhry, Abdul Rauf Chaudhry and Khushnood Akhtar Lashari is adjourned.

61. The cases of contempt of Court against Senator A. Rehman Malik and others are delinked and ordered to be fixed along with the

cases of all other contemnors noted hereinabove, including contempt of Court against Malik Muhammad Iqbal, Ex. DG, FIA as in his case judgment was reserved but now one of the Hon'ble member of the Bench has retired, therefore, his case is also to be heard afresh.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court on 22.11.2013 at Islamabad

CHIEF JUSTICE

Approved For Reporting