

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja  
Mr. Justice Khilji Arif Hussain  
Mr. Justice Sarmad Jalal Osmani  
Mr. Justice Amir Hani Muslim

Criminal Original Petition No. 96 of 2012  
in SMC 16/2011 etc.  
(Senator Haji Adeel v. Raja M. Abbas etc)

For the petitioner (s): Mr. Ghulam Qadir Jatoi, AOR

In Attendance: Raja Abbas, Chief Secretary Sindh  
Mr. Waseem Ahmed, Home Secretary  
Mr. Fayyaz Ahmed, IGP Sindh  
Mr. Ali Sher Jakrani, AIG (Legal)

For Federation: Mr. Jawaid Farooqi, DAS  
Mr. Munir-ur-Rehman, DAG

For IG Sindh: Mr. Shah Khawar, ASC & Sheraz Iqbal Ch. AOR

For Home Secretary: Mr. Abid S. Zuberi, ASC

For Election Commission: Nemo

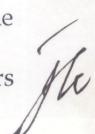
For the respondent (s): Mr. Abdul Fatah Malik, AG Sindh  
Mr. Adnan Karim Memon , AAG

Date of Hearing: 08.02.2013

ORDER

Jawwad S. Khawaja, J. The proceedings are continuing from yesterday.

We had directed in our judgment of 6.10.2011 that an independent and de-politicized investigating agency should conduct investigation of cases fairly, honestly and without being influenced by outsiders. We had also directed that protection should be provided to witnesses and that prosecutors before Anti-terrorism Courts should be appointed in a highly transparent manner. The reply which has been submitted in CMA 270/13 does not give any on-ground particularization of witness protection programs. This has to be done. The learned Prosecutor General has stated that the prosecutors in Anti-terrorism Courts are appointed by the Provincial Government and not by the Prosecutor General. We have been informed that earlier prosecutors had been appointed on contract basis without the involvement of the Public Service Commission in their selection. Presently we are told that all prosecutors



employed on contract have been relieved pursuant to our judgment dated 6.10.2011 and the prosecutors now engaged in the prosecution of anti-terrorism cases have all been selected through the Provincial Public Service Commission. It is stated that revamping of the investigation branch of the police has been undertaken. The actual implementation of such revamping has been briefly explained but there are further particulars which need to be furnished. Let this be done within the next 3 days.

3. The D.G. NADRA and I.G. Police were also directed to set up a special joint cell of specialized officials and experts alongwith adequate manpower to identify illegal foreigners so that they may be dealt with in accordance with law. This exercise was to be completed within one year from our judgment dated 6.10.2011. It is regrettable that this has not been done. The I.G. has, however, stated that the Alien Registration Authority has issued authorization to permit registered aliens to stay in Pakistan. We were informed that according to a survey undertaken by the special branch of police, there are presently 14 lakh illegal foreigners residing in Karachi. No report has been submitted in this behalf despite our orders. The learned DAG is also clueless and has been unable to answer our queries or to give any definitive statement as to why our order has not been complied with and who is responsible for such non-compliance. He shall do so before the end of court hours today.

4. The IG has submitted a report as to the disappearance/elimination of police functionaries who took part in Karachi operations of 1992 and 1996. We have noted in our earlier order that the report has been submitted and the matter of compensation has also been resolved.

5. The Secretary Home Department of the Province states that he is not aware of how many judicial enquiries were instituted in the matter of killings in Karachi since 1985. This statement appears to be quite extra-ordinary coming from the senior most functionary of the Home Department of the Province. He stated that reports of 15 such inquiries have been traced by him. These 15 judicial inquiries are as under:-

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S#	ENQUIRY	NAME OF INQUIRY OFFICER
1.	Enquiry due to coallapse of Faiza Heights, Sector 5-1, North Karachi. (No.I(2)SOJ/97 Enq: Notification Dated 25.07.1997)	Mr. Bashir Ahmed Ansari, Chairman Chief Minister Inspection Team.
2.	Judicial Enquiry into the incidence of	Dr. Amir Ahmed DMH South Karachi.

	Bus Accident at Korangi Industrial Area, in which 18 people have killed. (SO(J-II)I-7/1999 J-E Notification dated 08.02.1999)	
3.	Judicial Enquiry into the incidence of Bus Accident at Korangi Industrial Area, in which 18 people have killed. (SO(J-II)I-7/1999 J-E Notification dated 08.02.1999)	Mr. Khusru Parvez Khan, DM East Karachi.
4.	Judicial Enquiry into the incident of injuries suffered by Mr. Asif Ali Zardari in police custody.	Mr. Suleman Ansari, District & Sessions Judge, Malir Karachi.
5.	Judicial Enquiry into the incident of New Sabzi Mandi, Karachi, causing death of Labourer Willayat Khan and injuries sustained by others (SO(J-II)I-19/01 JE Notificastion dated 24.11.2001.	Mr. Imam Bux Soomro, District & Sessions Judge, Malir.
6.	Judicial Enquiry into the murder of Abdul Razik Khan former Deputy Speaker Sindh Assembly. (SO(J-II)I-88/03 JE Notification dated 24.07.2003.	Mr. Ibrar Hussain F Memon VII-Addl: Sessions Judge, Karachi.
7.	Murder of two minor girls SASSI and HAJRA within jurisdiction of police station Gadap. (SO(J-II)I-02/2004 dated 25.02.2004.	Mr. Zafar Ahmed Khan Sherwani, Distt: & Sessions Judge, Karachi East.
8.	Judicial Enquiry into the incident of Murder of Abdullah Murad, MPA on 06.03.2004. (SO(J-II)I-3/2004 J-E Notification dated 17.03.2004)	Mr. Justice Muhammad Moosa Leghari of High Court of Sindh.
9.	Judicial Enquiry into the Murder of Mufti Nizamuddin, Karachi. (SO(J-II)I-1/7/2004 J-E Notification dated 26.06.2004.	Honourable Mr. Justice Wahid Bux Brohi of Sindh High Court, Karachi.
10.	Judicial Enquiry into the Death of Accused Amir Zada & Saleem Khan PS Gizri. (SO(J-II)I-10/04 J-E Notification dated 10.10.2004	Mr. Muhammad Shahid Shafiq, ADJ, Karachi South.
11.	Judicial Enquiry into the Murder of Former MPA Muhammad Aslam Mujahid. (SO(J-II)I-6/2005 J-E Letter dated 30.05.2005.	Mr. Andil Razzaque, IV-Addl. Sessions Judge, Karachi East.
12.	C.P.No.D-853/2005 filed by Saadullah Khan Vs. the State and others. (SO(J-II)I-11/05 J-E Notification dated 29.09.2005.	Mr. Justice Syed Zawwar Hussain Jafery, Judge of High Court of Sindh, Karachi.
13.	Judicial Enquiry into the incident of bomb blast at Nishter Park, Karachi on 11.04.2006 (SO(J-II)I-9/2006 J-E Notification dated 27.04.2006)	Mr. Justice Rahmat Ali Jaffery.
14.	Enquiry into the Violent incident in Karachi on 30 <sup>th</sup> Nov., 1 <sup>st</sup> and 2 <sup>nd</sup> December 2008 (SO(J-II)I-28/09 J-E Notification dated.	Mr. Justice (Rtd) Ali Muhammad Baloch.
15.	Judicial Enquiry into the incident of Target Killing in Karachi. (SO(J-II)I-7/2010 J-E Notification dated 28.07.2010.	Mr. Justice (Rtd) Ali Sain Metlo.

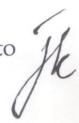
Particulars of judicial inquiries other than the 15 listed above shall also be furnished or in the alternative a categorical statement shall be made that there are no other reports of any judicial inquiry apart from the 15 noted above.

6. Observations were made by us for smooth running of economic and commercial activities and the steps to provide protection against illegal strikes. The

government was to evolve a strategy to deal with such situations by coordinating with the political parties. The learned Advocate General states that the report in this respect has not as yet been submitted and seeks some time to file the same. Let this be done within one week.

7. The MIT High Court of Sindh has provided us a list of police functionaries who are facing criminal trials in the various Courts of the Province. It is our understanding that these persons despite being challaned and being proceeded against are currently enjoying field postings. The IG was to comment on this. He stated that he is heading the police force of 1 lakh people and is, therefore, un-aware of current postings of each one of them. He may have misunderstood the Court question because we are not interested in 1 lakh employees of the police force but want to know if these persons who are in the police department and facing criminal trials and who number approximately is 300/400, whether they have faced any disciplinary action and whether they are performing active police duty in the field. Mr. Ali Sher Jakrani AIG (Legal) is also present. The same question was put to him and although he supposedly is heading the legal department of the police has stated clearly that he is not in a position to answer the above questions which were posed to the IGP. If indeed these police functionaries are enjoying field postings despite the criminal cases against them, it represents an alarming and dangerous break-down of the administration of police department *prima facie*. The IGP shall submit for our perusal in Chambers a complete report setting out; (a) the current postings of these officials, (b) the disciplinary action, if any, which may have been initiated against these functionaries, (c) the reason as to why the prosecution has not as yet concluded, and (d) the actions, if any, taken in respect of these persons.

8. Here we may note that some of these prosecutions have been going on since 2004 and most of these matters are listed for evidence or production of prosecution witnesses. The reasons for delay in the prosecution may also be clearly set out. Mr. Shah Khawar learned counsel for IGP states that if a copy of the report of the MIT had been made available earlier, this question could have been answered. We are surprised on this submission because is not the job of the Court to gather the information as to



police officers facing criminal charges/trials. However, a copy of the report has been furnished to Mr. Shah Khawar.

9. The learned DAG has not been able to show any action which may have been taken by the Federal Government pursuant to our judgment dated 6.10.2011. This is most unfortunate. Even during these hearings we had brought to his notice various paragraphs of our judgment which required action by the Federal Government. We had also asked him to go through paragraph 55 of our judgment which is in the following terms:-

*"It is to be noted that, primarily it is the duty of the Province through its executive authorities to control the law and order situation and ensure implementation of Fundamental Rights of citizens. But prima facie it seems that the Provincial Authorities have not fulfilled their constitutional duty. Under the Constitution, equally it is the obligation of the Federation to protect every Province against internal disturbances as well as external aggression and to ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution".*

10. The learned DAG then placed before us a letter dated 25.10.2012 which he had written to the Secretary Interior and the D.G. FIA in order to see the level of interest of the Federation in the prevailing situation in Karachi. The entire letter is reproduced as under:-

"OFFICE OF THE DEPUTY ATTORNEY GENERAL FOR PAKISTAN  
Karachi the 25<sup>th</sup> October, 2012  
Dy. No. 1638-K/12-DAG-VI

*The Secretary  
Ministry of Interior  
Government of Pakistan  
Islamabad*

*Director General,  
Federal Investigating Agency  
Islamabad.*

*Subject: S.M.C.NO. 16/2011 SUO MOTO ACTION REGARDING LAW & ORDER SITUATION IN KARACHI (WATAN PARTY & ANOTHER VERSUS FEDERATION OF PAKISTAN.*

*This is to inform you that the Suo Moto action regarding law and order situation in Karachi is being heard by the Larger Bench of the Hon'ble Supreme Court of Pakistan at Karachi Registry. The case proceeded from 23<sup>rd</sup> October, 2012 till today and was adjourned to 31<sup>st</sup> October, 2012. During the course of arguments the Hon'ble Bench called compliance report on directions given in its judgment dated 13.9.2011 reported in PLD 2011 SC 997 in which certain directions were given to the Federal Government. In that case Mr. Moulvi Anwar ul Haq the then Attorney General for Pakistan appeared and the matter was heard in detail. Today the Hon'ble Bench took up the issues mentioned at para 131 page 1133 (2<sup>nd</sup> Last para) of the reported judgment, wherein directions for setting up special joint cell with specialist officials and experts along with sufficient manpower to establish several teams to visit on the spot and identify illegal foreigners. During the course of arguments today the Hon'ble Bench asked to explain the steps that were taken in order to control influx of illegal foreigners which are living and earning likely hook in Karachi and they are in a number of millions, due to which law and order situation is getting worse day by day. The Hon'ble Bench further observed that respective role of NADRA and NARA is to the*

extent of registration of citizens of Pakistan and the aliens and as such NADRA officers do not have any power to take penal action against illegal foreigners, therefore, the Federal Government should place on record the policy regarding taking action against the illegal foreigners. The Hon'ble Bench directed to place on compliance report from the Federal Government regarding policy that would have been formulated in compliance of aforementioned reported judgment and adjourned the matter to 31<sup>st</sup> October, 2012 on which date the matter will be proceeded. In order to comply to the Court order you are required to depute a senior officer preferably the rank of Joint Secretary from the Ministry of Interior and or any other officer concerned be directed to be in attendance before the Hon'ble Supreme Court of Pakistan at Karachi Registry on 31<sup>st</sup> December, 2012 at 9:30 am.

Please treat this as "Most Urgent".

Thanking you,

Sd/-  
(Jawaid Farooqi)  
Deputy Attorney General"

11. Today, after the lapse of almost three and a half months from the date of the aforesaid letter, the learned DAG has stated that no action pursuant to the same has been taken. The letter also mentions that some senior functionary shall be deputed to brief the DAG on the questions which were raised during the last hearing of these cases at Karachi but no such person appears to have been deputed to brief the DAG. This provides the clearest manifestation of the absence of interest or active involvement of the Federal Government in the prevailing situation.

12. To come up on 25.2.2013 for further proceedings.

Judge

Judge

Judge

Judge

**KARACHI, THE**  
8<sup>th</sup> February, 2013  
A. Rehman/\*