

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 Const. Petition No. 61/2011 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: Mr. M. Munir Parach, ASC

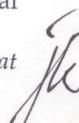
For the respondent (s): Mr. Abdul Fatah Malik, AG Sindh  
Mr. Adnan Karim Memon , AAG

Date of Hearing: 07.02.2013

ORDER

Jawwad S. Khawaja, J. We have taken up the operative part of our judgment dated 6.10.2011 and have heard Mr. Shah Khawar learned counsel representing the I.G. Police Sindh and Mr. Abdul Fatah Malik learned A.G. Sindh to ascertain what action, if any, has been taken in respect of para 131 of the judgment. Para 131 *ibid* contains a number of observations and directives meant to address the deteriorating law and order situation in the city of Karachi. It may be noted that there is unanimity on the point between all those appearing before us that the law and order situation is not good and as noted in our order passed yesterday it has actually deteriorated since our judgment of 6.10.2011. Seriatim, we take up now each of the observations, remarks and directives given in para 131 aforesaid.

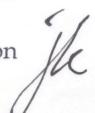
2. Firstly, it has been observed by us, *inter alia*, that turf wars between political actors are aggravating the law and order situation "based on the phenomenon of tit for tat



*with political, moral ad financial support or endorsement of the political parties, who are claiming representation on behalf of the public".*

3. Reports have been submitted in Court including CMA 270 of 2013 filed by the Advocate General Sindh and CMA 48-K/2013 submitted by Mr. Shah Khawar on behalf of IG Sindh. It is regrettable that no stance has been given or position taken in respect of the above noted observation. A lot of verbiage has been used by the concerned departments in CMA 270 of 2013 but not one word has been uttered in respect of the said observation. On the contrary it has been stated that "*the Hon'ble Court has rightly pointed out that violence in Karachi is multi-facet originating from the struggle for socio-economic and political gains by various criminal elements*". This itself would amount to a tacit acknowledgement of the role being played for "*political gains by various criminal elements*".

4. The next declaration which has been made in our judgment of 6.10.2012 is *inter alia*, to the effect that there has been detection of torture cells and videos are also available of torture being used in such cells. There is nothing in CMA 270 of 2013 or in the oral submissions of Mr. Shah Khawar to even remotely suggest that the perpetrators of torture have been apprehended. We fail to understand how it is that with such solid evidence being available the concerned persons have not as yet been apprehended. The report (CMA 270/2013) contains a table indicating *inter alia*, the action taken against extortionists, land grabbers etc. The specifics we believe are available now with the police but challans in most cases have not been submitted in Court. The fundamental rights of citizens noted in this para of our judgment and the declaration made therein have not been protected/enforced by the executive authority. We may also reproduce the declaration made by us that the "*Federal Government/Executive has also not protected Province of Sindh against internal disturbance, thus the government of Province of Sindh, on this account, too failed to carry out functions in accordance with the provisions of the Constitution [Article 148(3)]*". We posed the specific question to the learned DAG asking him to show as to the nature of actions which may have been taken or proposed in line with Article 148(3) of the Constitution. It is quite an alarming state of affairs that he has no instructions on the matter and the Federation



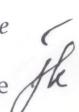
has not even chosen to file its reply, if any, outlining the actions which have been taken in the light of Article 148(3) *ibid* since our judgment of 6.10.2011.

5. We have also observed in our judgment that "*to come out of the instant grave situation ... the police force being principal law enforcing agency has to be de-politicized and strengthened*". In respect of this observation, we are somewhat surprised to learn that out of one lakh employees in the police force of the province, not a single one of such employees has been identified as having been appointed/promoted/posted on the basis of political influence/considerations. We also note that during the hearing of another petition (Crl. O.P.89/2011) which was listed for hearing yesterday and is again listed for hearing today, a number of appointments in various departments of the Sindh government including police, were *prima facie* shows to be based on considerations other than merit. We, therefore, note with regret that a serious attempt appears not to have been made to identify such functionaries in the police department who owe their posts to political interference. The reply given in CMA 270 of 2013 is thus *prima facie* wholly unsatisfactory.

6. The next observation made by us was "*in respect of banning any political party*". We have already noted in para 2 above that the police and other government departments have not identified the extent of support etc. of political parties being extended in turf wars in Karachi. It is, therefore, essential to have the inputs/evidence, if any, against political parties in terms of para 2 above to make an order in respect of the observations noted in this para.

7. We have noted that as per material brought before the Court "*there are criminals who have succeeded in making their way into political parties*". In CMA 270 of 2013, we have been provided a list of 5 FIRs in South range and 11 FIRs in West range but the details/particulars of the persons involved, the nature of offences and most importantly the affiliation, if any, of the accused with a political party have not been mentioned. Mr. Shah Khawar requests for some time to provide the requisite details. Let him do so within this week.

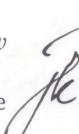
8. Our next observation related to ethnic strife and turf wars. To break this cycle we had observed that "*boundaries of administrative units such as police stations, revenue estates etc.*" be altered. Mr. Shah Khawar states that out of more than 100 police



stations in Karachi, the limits of the jurisdiction of 20 has been altered. However, in CMA 270/2013, there is no explanation as to why these changes have been affected and whether or not the changes are in furtherance of our observation. Within this week, a report explaining the changes in the context of the observation of the Court shall be filed.

9. We had also directed that the Election Commission of Pakistan (ECP) may initiate the process of de-limitation on its own. We note that on 26<sup>th</sup> & 28<sup>th</sup> November, 2012, this matter was taken up. The Secretary, ECP had made a categoric statement that there was no hurdle in the de-limitation of constituencies. Mr. Munir Paracha learned counsel, however, states that ECP is in the process of examining the validity/legality of the statement made by the Secretary ECP as recorded in the order dated 28.11.2012. As the record of this case stands today, it is clear that the de-limitation of constituencies needs to be processed. We have been informed that one of the political parties has filed a review petitions (CRPs 7 & 8 of 2013 in SMC 16/2011). The filing of the review petitions by itself does not prevent the ECP from initiating and taking forward the process of de-limitation. Mr. Munir Paracha learned counsel for ECP states that such exercise is being processed and taken forward subject to internal decision of ECP and any decision which may be taken by this Court while deciding CRP 7 & 8 of 2013. Having noted this, we may add that under Article 218(3) of the Constitution, it is "*the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against*". The constitutional mandate thus is in furtherance of the fundamental principle that as nearly as may be practicable, the Election Commission shall itself ensure equal right of franchise for every voter. Thus, if at all the census has not been undertaken by the Executive, the absence of such census may not impede the Election Commission in fulfilling its constitutional duty as envisioned in Article 218.

10. Our next observation was that "*Karachi is full of arms and ammunition of prohibited and non-prohibited bores including licensed and illicit, therefore, Karachi has to be cleansed from all kinds of weapons by adhering to the laws ... and if need be by promulgating new legislation*". It appears that noting material has been done to achieve this objective. We



have already noted in our order passed yesterday that legislation is essential and is likely to result in substantial reduction of lawlessness. Today once again the learned Law Officer has pointed out that enacting laws relating *inter alia*, to arms falls within the legislative competence of the province. He, however, has not been able to explain as to why such legislation has not so far been enacted. The draft bill of the Arms Act 2012 which was mentioned yesterday, has statedly been sent to the Law Department of the province only today.

11. Thirdly, we have been informed that on 10.1.2013, the province has entered into an agreement with NADRA to document and identify existing/genuine arms licenses. Once again there is no valid explanation as to why it has taken more than 15 months for this to happen.

12. Fourthly, a new policy for issuing arms licensing has statedly been notified on 18.12.2012. Yesterday we had noted the following:-

*"4. The subject of arms and their proscription/licensing falls within the provincial domain. This was also the case when the Arms Ordinance 1965 was promulgated under the 1962 Constitution. We were, therefore, quite surprised when the Home Secretary stated that he had written to the Federal Law Secretary on the subject. We fail to understand why this was done because there is no apparent constitutional basis for this strange step. The learned Advocate General also stated in clear terms that the subject falls within the remit and legislative domain of the province and according to his opinion, (already conveyed to the relevant quarters in government), the province is constitutionally empowered to legislate on the subject of arms. There, however, appear to be some reservations which we were not made aware of, which are a stumbling block in passing the appropriate legislation. It is for the government and the provincial legislature to proceed with the matter on urgent basis because Karachi city is in the grip of violence and lawlessness.*

*5. The Interior Secretary indicated that he had approached the Federal Law Secretary because uniform legislation, in his opinion, was required for the entire country. We are unable to understand the logic or the constitutional basis for this submission. As noted above and also confirmed by the learned Law Officer, the legislation has to be enacted by the provincial legislature and government regardless of laws prevailing in the other provinces. In fact the very basis of the federal structure of our Constitution will be negated if a province does not act within its own legislative domain simply because other provinces are not doing so."* 

13. Today Mr. Abid S. Zuberi learned counsel for the Home Secretary has filed CMA No. 51-K/2013. The documents filed with the CMA show *prima facie* that our order has not been complied with. The Additional Chief Secretary, Home Department, Province of Sindh appears to have prepared a summary for the Chief Secretary for approval of the proposed Sindh Arms Act. This was done on 13.7.2012 i.e. 9 months after our judgment of 6.10.2011. We note with extreme concern that even though the law and order situation in Karachi is worsening by the day, the law has still not been passed or even tabled in the Assembly. It is also a matter of concern showing *prima facie* a lack of seriousness and diligence that even though the aforesaid letter was written 9 months after our judgment, no action on the proposed legislation was taken by the concerned functionaries. Instead a Committee appears to have been constituted involving the Federal Secretary Law although the learned Law Officer of the province stated yesterday and re-affirmed today, that after the 18<sup>th</sup> Amendment, the legislation falls squarely within the legislative competence of the province.

14. Mr. Shah Khawar has pointed out that a number of illicit weapons have been recovered. Details of such recoveries made between 30.9.2011 and 31.12.2012 have been given in the CMA.

15. This case is adjourned for further hearing tomorrow i.e. 8.2.2013.

*S. S. Khan*  
Judge

*L.B*  
Judge

*M. H. Rehman*  
Judge

*A. Rehman*  
Judge

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

*11/2*