

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT:

MR. JUSTICE JAWWAD. S. KHAWAJA, HCJ
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE QAZI FAEZ ISA

Criminal Review Petition No.47/2015
In/and Crl.P.578/2014

Azhar Iqbal (Azhar Hussain)	Versus	Abid Hussain
Abid Hussain	Versus	Azhar Iqbal

For Azhar Iqbal:	Ch. Munir Sadiq, ASC
For Abid Hussain:	Syed Rifaqat Hussain Shah, AOR
On Court's Notice:	Mr. Salman Aslam Butt, AGP Mr. Sajid Ilyas Bhatti, DAG
For FIA:	Mr. Jaffar Shah, Director (Law) FIA
Date of hearing:	21.8.2015

ORDER

Jawwad S. Khawaja, C.J. This case has been going on for some time since January 2015. We heard the matter at some length yesterday when we noticed that there was an alarming lack of diligence on the part of the Government in relation to immigration into Pakistan, emigration from Pakistan, human trafficking and smuggling. Although there are a number of statutes dealing with these matters, it became apparent that these statutes are mere words on paper as the same are not implemented. We, therefore, were constrained to call the Secretary Interior. This was done because the FIA stated that although they were responsible for the enforcements of three of the aforesaid laws while smuggling was in the domain of the Customs, the FIA did not have sufficient funds. The Secretary Interior appeared and gave us a few financial statistics. It was his opinion that there were sufficient financial resources available with FIA to enforce the laws within its domain as per the Federal Investigation Agency Act, 1974. However, as per the figures provided to us the total budget for FIA in the financial year 2014-2015 is 1.6 billion rupees, out of which 80

percent is spent on fixed sums by way of salaries, etc. and only 20 percent is available for all operating expenses, including a meager sum of about 1.6 million rupees as 'investigation' cost annually for the whole of Pakistan. The Secretary explained that there were other heads such as postage, communication, trunk calls etc. which also could be used for investigation purposes. We noticed that some heads of accounts such as scholarships, other awards, cash rewards are twice the amount of the investigation cost. We do not need to go into further details of these figures because as noted, the Secretary Interior did not think that there were insufficient funds for FIA.

2. Every day we are coming across reports of people desperate to leave Pakistan by any means. Some of them attempt to leave Pakistan on launches, via sea borders, and other borders across the land with Iran and Afghanistan. In these desperate attempts they actually play with their lives to leave Pakistan. The case of Abid Hussain v. Azhar Iqbal (Crl.P. No. 578 of 2014) and a photograph appearing on the front page of the newspaper 'Express Tribune' of 20.8.2015 are two specific instances which came up before the Court yesterday. The photograph shows abandoned Pakistanis on a flimsy raft off the coast of Greece. There may be many more thousands of such cases in respect of Pakistani citizens risking their lives. Similarly, there is a flood of illegal immigrants into the country. A newspaper report mentions about a community of Somalis residing in the Capital. In a written response to a question the Interior Minister sated in January 2012 to the National Assembly that about five million illegal immigrants were living in Pakistan. These cases appear to be typical, however, disconcerting aspect of such cases is that nothing appears to have been done to enforce the law and to prosecute human traffickers.

3. FIA which is a department of the Ministry of Interior and is amongst others responsible for administering the Foreigners Act, Passports Act, Emigration Ordinance, Exit from Pakistan (Control) Ordinance and the Prevention and Control of Human Trafficking Ordinance, appears moribund and the borders of Pakistan appear to be unmonitored; consequently, the menace of human trafficking, terrorism and smuggling flourishes. We were also surprised to learn that there appears to be no enforcement of the applicable laws on the border between Afghanistan and Pakistan at Torkham and at Chaman.

In fact the Director FIA stated that Torkham fell within FATA and FIA has no jurisdiction on that border. We were informed that on the border of Pakistan – Afghanistan there was no FIA or Immigration Check Post, though approximately half a kilometer inside Pakistan there was a small one. Even in respect of such post there are no entry or exit statistics and we were informed that borders at Torkham and Chaman are not properly monitored or manned. As a result it is not difficult at all to enter or leave Pakistan through these borders. Same appears to be the position with regard to the inspection of luggage and goods brought into Pakistan through such borders as there are no Custom posts on Pakistan's borders.

4. Since we have been informed that the Government is very serious in its attempt in fighting terror and enforcing the National Action Plan which was announced in late December 2014, the situation which has emerged before us shows prima facie a gaping chasm between the laws and the efforts/statement of the Government. We would like to ascertain the factual position by appointing two local Commissions only in respect of two borders; a similar position may be inferred with regard to other borders. We may add the fundamental rights to life and liberty given in the Article 9 of the Constitution, the inalienable right to the dignity of man in Article 14 of the Constitution along with other fundamental rights mentioned in the Constitution are directly in issue before us.

5. Considering the above, in exercise of judicial powers conferred upon this Court under Articles 187 and 190 of the constitution, Order XXXII, Rules 1 & 2 read with Order XXXIII, Rule 1 of the Supreme Court Rules, 1980 coupled with the principles of Civil Procedure Code including Order XXVI, Rule 10 the following two Commissions are constituted:

(1) Khyber Pakhtun Khaw: In respect of the Border at Torkham

- a) Mr. Muhammad Waqar Rana, Additional Attorney General.
- b) Mr. Umer Farooq Adam, Additional Advocate General KPK
- c) Mr. Jaffar Shah, Director FIA
- d) Dr. Muhammad Zubair Yousfani, Chief (International Customs) FBR

(2) **Balochistan: In respect of the Border at Chaman**

- a) Mr. Muhammad Waqar Rana, Additional Attorney General.
- b) Mr. Shai Haq, Assistant Advocate General Balochistan
- c) Mr. Jaffar Shah, Director FIA
- d) Dr. Muhammad Zubair Yousfani, Chief (International Customs) FBR

The aforesaid two Commissions shall visit Pakistan's borders at Torkham and Chaman and prepare comprehensive reports together with photographs, maps, etc. The Terms of Reference of the two Commissions are as follows:

- (a) To ascertain whether at the international border there is any presence of FIA personnel to monitor/check emigration and immigration and whether particulars of those entering and leaving Pakistan are maintained manually, biometrically, photographically or by any other means, and if so submit copies thereof in respect of the last month, i.e. June, 2015. Photographs of the immigration post/office be also submitted.
- (b) To ascertain whether at the international border there is any presence of Customs personnel to check luggage/goods and the duties/taxes realized and whether prohibited items are confiscated and if so the place of storage thereof. Photographs of the Customs post/office be also submitted.
- (c) Distance between the international border and the office of FIA and Customs supported with map and photographs.
- (d) Facilities for travelers, if any, with photographs.
- (e) The department/agency/authority controlling the entry into and exit from Pakistan with photographs.
- (f) Whether any cameras and/or biometric system is installed to monitor/record people and goods entering and leaving Pakistan and if it is in good working order.

All Federal and Provincial authorities to extend full cooperation to the Commission, including provision of transportation, security and stay in rest houses.

6. Both Commissions shall submit their reports by or before the next date, i.e. **1st September 2015**.

Chief Justice

Judge

Judge

Islamabad, the
21st August, 2015
(Zulfiqar)