

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ

MR. JUSTICE IJAZ AHMED CHAUDHRY

MR. JUSTICE GULZAR AHMED

CONSTITUTION PETITION NO.35 OF 2013

[Multi-Billion Scam in the EOBI]

Voluntary Appeared	:	Mr. Huzaifa Rehman, Special Correspondent (Investigation) Capital TV. Lt. Col (Retd) Muhammad Tariq Kamal, Former Director Town Planning, DHA.
<u>On Court's Notice</u>	:	Mr. Muneer A. Malik, Attorney General for Pakistan.
For M/o HRD	:	Mr. Abdul Khaliq, Secretary Mr. Mukhtar, Assistant Chief.
For EOBI	:	Mr. Javed Iqbal, Director General Mr. Pervez Ahmed, Director General (Audit). Mr. Asif Azad, Director (Investment). Mr. Abdul Latif, Director (Law)
For FIA	:	Mr. Saud Mirza, Director General Mr. Muhammad Azam Khan, Addl. D.G.
For M/o Interior		Mr. Athar Hussain Sial, Addl. Secretary (<i>On Courts Call</i>)
Date of Hearing	:	01.07.2013

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.- In response to notice dated 29.6.2013, Mr. Abdul Khaliq has appeared and submitted a report (CMA No.4211/2013). He stated that he assumed the charge as Secretary, Overseas and Human Resources on 03.05.2013, whereas,

earlier to his appointment, Mr. Ahsan Raja performed duties as Secretary of said Division from 27.05.2011 to 03.05.2013. According to him, presently, there is no Chairman of EOBI as on the transfer of former Chairman, Mr. Zafar Iqbal Gondal, he approached the Sindh High Court and succeeded in obtaining stay order dated 8.5.2013, contents whereof indicates that latter was restrained to be repatriated to his parent department, however, he was also restrained from acting as Chairman, EOBI till the next date of hearing. He further stated that in the meanwhile, he (Mr. Zafar Iqbal Gondal), on 31.5.2013 had relinquished the charge on his own and reportedly had joined his original department, namely, Pakistan Audit and Accounts Service, therefore, no Chairman could be appointed. When we enquired from him as to whether information disseminated by Mr. Huzaifa Rehman, on a private channel of electronic media, extract whereof has also been made available along with the report published in print media, the same was based on correct facts or otherwise, he stated that the information so disclosed was correct except that certain chains were missing, therefore, as he was not in possession of complete record.

2. Mr. Huzaifa Rehman has also appeared and confirmed the facts which have been noted in the office note and stated that he is not in possession of certain documents which he could produce in Court. He was allowed to do so but after some time he appeared and stated that as he is receiving threats on phone calls and in the meanwhile he has to go to Lahore to appear in viva voce examination, as such, on coming back from Lahore he would produce those documents before

the Court. Be that as it may, as the Secretary being the custodian of original record, has not contradicted his story, therefore, he is permitted to go to Lahore and in the meanwhile, Secretary Interior, Government of Pakistan, is directed to provide him protection. In response, Additional Secretary Interior, present in court, stated that full protection would be provided to him and it would be ensured that no one could cause harm to his person and property.

3. According to the report submitted by the Secretary, immediately after joining the department, he has issued directions for ban on purchase of property and award of new construction contracts w.e.f. 7.5.2013. Perusal of the report suggests that regarding alleged corruption in EOBI in the 106th BoT meeting held on 11.6.2013 one of the actions is reproduced herein below:

"4. An Audit Party headed by Chief Finance and Account Officer of the Ministry of Overseas Pakistanis and Human Resource Development has been constituted to probe issues related to Investments in he EOBI with the direction to submit its report by 6th July, 2013."

4. It is important to note that in the information disclosed in the electronic media, reference of which has been made hereinabove, purchasing of property by EOBI on alleged exorbitant rates, have been highlighted. In this regard, the Secretary HR & Overseas has placed on record a list of 18 properties purchased privately by EOBI including property from the DHA, Islamabad and Rawalpindi; and most of the transactions, *prima facie*, seem to have taken place in a non-transparent manner, including non-following PEPPRA Rules.

5. Importantly, two properties have been purchased from DHA, as noted hereinabove, allegedly involved an amount of Rs.15 and 6 billions, approximately, respectively details of which are noted hereinbelow:-

Sr#	Name & Address	Area	Cost of Purcahse(Rs.)	Market Value as on 30.6.2012	Type	Date of purchase	Name of Seller/ auctioneer	Address	Cheque Details
4.	Property at DHA, Islamabad, in Phase-I and Phase-II Extension, DHA Expressway and DHA Valley (Total Area 321.3 Kanals)	321.3 kanals	15,743,700,000	16,124,000,000	C	8/01/12	DHA Rawalpindi (Administrator Brigadier Saadullah Fatmi	Office at Defence Mail Defence Avenue, Islamabd	Annexure-D
18.	DHA Phase-1 Sector-F Rawalpindi	370 Iplots of various sizes and 191 Defence	6,825,000,000	-	R/C	5/3/12	DHA Rawalpindi (Administrator Brigadier Saadullah Fatmi)	Office at Defence Mall Defence Avenue Islamabad	Annexure-R

6. During hearing, Mr. Muhammad Tariq Kamal, Director Town Planning DHA, Islamabad has appeared and stated that in fact land measuring 400 kanals was given to Behria Town by the DHA subject to the condition laid down in the agreement dated 2.6.2009, copy of which has been placed on record. He has specifically referred to clause 4.12 *ibid*. It is his case that according to the terms and conditions of the said agreement, cost of development and marketing of the plots is the responsibility of Behria Town, therefore, he is of the opinion that in such manner DHA will not be benefited, but, in the meanwhile, this very property has been purchased by the EOBI for the amount mentioned hereinabove, details of the cheques has also been

placed on record with the report by the Secretary which reads as under:-

"DHA – Islamabad

Subject:- Payment on account of purchase of properties amounting to Rs.15,743,700,000/- from M/s DHA Islamabad in Phase I & II Extensions-DHA Express way and DHA Valley-measuring 321.3 Kanals.

Sr.#	Description	Cheque#	Dated	Amount Paid	Favoring
1.	Token amount	0429440	02-11-2011	100,000,000/-	DHA-Islamabad
2.	Token amount	0429496	20-01-2012	2,100,000,000/-	DHA-Islamabad
3.	Token amount	1054525	26-01-2012	2,500,000,000/-	DHA-Islamabad
4.	Token amount	1054536	08-02-2012	5,000,000,000/-	DHA-Islamabad
5.	Final Payment	1603414	23-04-2012	6,043,700,000/-	DHA-Islamabad

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Total Amount Paid Rs.15,743,700,000/-"
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It is alleged by him that the said amount, as per the agreement between DHA, Islamabad, Bahria Town (Private) Limited and Habib Rafiq (Private) Limited under caption "REGARDING THE CONSTRUCTION OF AN EXPRESSWAY CONNECTING ISLAMABAD HIGHWAY TO DHA VALLEY AND DHA PAHSE-II EXTENSION, AND THE DEVELOPMENT, MARKETING AND SALE OF COMMERCIAL AREA ALONG WITH EXPRESSWAY" has to be paid by the DHA to the Bahria Town (Private) Limited. He further stated that he raised objection on this agreement because it was not in the benefit of DHA, inasmuch as, he brought the said facts in the notice of the then Adjutant General, Lt. General (R) Javed Iqbal, but instead of considering his objection he was removed from the job. He further stated that he has received threats from one Nawaz Khokhar and others and has written a letter on

08.12.2011 to Malik Riaz Hussain, copy of which has been placed on record.

7. He further stated that as far as the property at Sl. No.18, sold to EOBI is concerned, was also a result of transaction between DHA and Bahria Town. Perusal of report submitted by the Secretary HR & Overseas, indicates that the payment of the amount mentioned hereinabove was also made by EOBI to DHA. Contents of the same are reproduced herein below:-

***"DHA –Islamabad
Phase-I-Sector F***

Subject:- Payment on account of purchase of property amounting to Rs.6,825,000,000/- from M/s. DHA Islamabad in Phase-I-Sector F-Islamabad- 23 commercial plots (8 Marlas each), 12 Residential plots (2 Canals each), 162 Defense villas of 3 Bed rooms, 29 Defence villas of 5 Bed rooms.

Sr.#	Description	Cheque#	Dated	Amount Paid	Favoring
1.	10% payment	3716011	04-03-2013	682,500,000/-	M/s Defence Housing Authority Islamabad
2.	40% payment	8479360 HBL-Nursery	1803-2013	2,730,000,000/-	M/s DHA-Islamabad
3.	Payment	3716043	02-04-2013	2,000,000,000/-	M/s DHA-Islamabad
4.	Payment	3716048	10-04-2013	1,412,500,000/-	M/s DHA-Islamabad

As Mr. Muhammad Tariq Kamal, former Director Town Planning DHA, Islamabad alleged that he is being threatened, therefore, the Secretary Interior, IGPs of Islamabad and Punjab are directed to provide him protection.

8. We had issued notice for the attendance of Mr. Zafar Iqbal Gondal, former Chairman, EOBI but he has not appeared. At this stage DG FIA has appeared and filed a report (CMA No.4212/2013), contents

of Paras No. 1, 2, 7, 13, 14 & 18 of the same are reproduced hereinbelow:

- "1. Enquiry No.30/2011 of F.I.A. C.B.C., Karachi was registered on 30.05.2013 after verification of a pseudonymous complaint received in FIA CBC, Karachi alleging massive corruption in EOBI, especially in property investment.*
- 2. After completion of the enquiry, Case FIR No.11/2013 of FIA CBC, Karachi dated 24.06.2013 has been registered u/s 409, 419, 468, 471, 109 of PPC r/w Section 5(2) of Prevention of Corruption Act 1947 against the Management of employees Old-Age Benefits Institution (EOBI), private property owners and others regarding purchase of four acres highly disputed land bearing Naclas 153, Survey No.536 & 537 of Deh Mehran, Tapo Malir, Karachi by EOBI at a very exorbitant rate excessively disproportionate to the then existing market rates. The land was not even in possession of the seller, and there were/are a number of claimants of the said piece of land. Besides, the land had no access/approach. The property was purchased by EOBI for Pak Rupees 2.023 billions out of which reportedly approximately 50% (1.00billion) were received back as kickback under a pre-settled/agreed arrangement. Thus EOBI/government sustained a approximate loss of 2.25 billions (including stamp duties/fees etc.) as a result of this shady, collusive, maneuvered and manipulated deal.*
- 7. According to Mr. Muhammad Qasim Pervez, authorized representative of Mst. Nighat Asad Mirza and Maham Mirza, the above advertisement was just a formality and it was already agreed that EOBI would purchase only the land in question. Therefore, instead of submitted bid/application through given P.O. box No.30 Karachi, the bid/application of Rs. 165,000/- (Rupees One lac and sixty five thousand only_ per square yard for sale of 04 acres lands was submitted at the reception of EOBI. Subsequently, on the instructions of Mr. Wahid Khursheed Kunwar, DG Investment EOBI, a visit of the land by a team of valuers M/s. AAA/Colliers Pakistan International (Pvt) Ltd. was arranged.*
- 13. Thus it is an established fact that an amount of Rs.809.248 million was paid at a time when the title of the land in question was not clear. A total sum of Rs.2.023 billion were disbursed to the sellers from the government Exchequer which ultimately reached the accounts of the lady sellers. The sellers subsequently returned 50% of sale proceeds approx Rs.1 billion as kickback to the accused Zafar*

Iqbal Gondal and Wahid Khursheed Kunwar being pre-settled deal through different means mainly through one Shaikh Farrukh Saleem, a clearing agent and close friend of accused Wahid Khursheed Kunwar.

14. *Shaikh Farrukh Saleem during investigation voluntarily disclosed that he received an amount of Rs.710 Million from the sellers through cash cheques and cross cheques. He further disclosed that he deposited an amount of Rs.650 Million in his account maintained at Standard Chartered Bank Clifton Branch, Karachi and subsequently handed over the entire amount in cash to Wahid Khurshid Kanwar and Zafar Iqbal Gondal directly or through their nominated persons.*
16. *From the facts narrated above, it is established that accused (1) Zafar Iqbal gondal as chairman (2) Wahid Khursheed Kunwar as DG 9Investment) EOBI and as such public servants, were entrusted with EOBI funds, both while discharging their official duties, in complicity with (3) Muhammad Iqbal Dawood (employers' Representative Sindh) (4) Malik Imtiaz Mehmood (Employees' Representative Balochistan) and lady accused (5) Mst. Nighat Mirza w.o Col. (R) Ali Asad Mirza (6) Mst. Maham Najeeb d/o Col. (R)Ali Asad Mirza (7) Muhammad Qasim Pervaiz (representative of both the ladies) (8) col. (R) ali Asad Mirza and others have committed criminal breach of trust in respect of such funds and thus caused wrongful loss to the Government exchequer to the tune of approximately Rs. 2.25 billion and corresponding wrongful gain for themselves and other associates."*

Likewise, in respect of some of the other transactions reference has been made in the report of Secretary. Be that as it may, we enquired from the Secretary HR & Overseas as to why immediate steps were not taken to save the wealth of public exchequer after having taken over the charge, he stated that a case has already been registered reference of which has been given hereinabove, and according to the DG FIA three persons, namely, M/s. Wahid Khursheed Kunwar, (DG Investment), Mst. Maham Najeeb and Ali Asad Mirza have been arrested; whereas Mr. Qasim Pervaiz has obtained transitory bail on

5th June, 2013 from the Islamabad High Court and Mr. Iqbal Daood has obtained transitory bail on 6th June, 2013 from the Sindh High Court, Hyderabad Bench and the dates of their bails are likely to expire on 5th and 6th July, 2013, respectively. Registrar shall procure the copy of the orders of granting bail to both of them from the concerned courts and submit for our perusal.

8. In view of the above narration of facts and having gone through the reports submitted by the Secretary HR as well as the DG FIA, it is directed that:

- 1) The Director General FIA shall proceed forthwith to conduct inquiry/investigation, as the case may be, in all the cases pertaining to the alleged corruption in making investment in the properties which are 18 in number as per list supplied by the Secretary along with his report.
- 2) DG, FIA would also be free to further probe into the affair in respect of any transaction of EOBI wherein it is noticed that corruption or corrupt practices have been committed by the responsible persons, whosoever he may be and without being influenced in any manner from their rank, status or position, political or otherwise because the money, against which it is alleged that misappropriation has been committed by corruption and corrupt practices, belongs to the tax payers, therefore, in terms of Article 9 of the Islamic Republic of Pakistan, 1973, they as well as the

beneficiaries of EOBI are entitled for the protection of their Fundamental Rights.

- 3) Secretary Interior shall strengthen the DG FIA by allowing him the services of the officers/officials from within or outside the cadre of FIA, in accordance with rules because we feel that allegations which have been unearthed called for, serious efforts to collect evidence immediately instead of allowing to spoil the same.

9. Adjourned to **12th July, 2013 at SI. No.1.**

Chief Justice

Judge

Judge

Islamabad
01.07.2013
(Zulfiqar)