

IN THE SUPREME COURT OF PAKISTAN
(Original/Review Jurisdiction)

PRESENT:

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

Civil Misc. Application No.3704 of 2015 in CMA No.4341 of 2014 in CMA No.3854 of 2014 in Suo Moto Case No.3 of 2009

(Reply of Syed Ali Zafar, ASC to the Show Cause Notice issued to him in compliance of order dated 09.04.2015 passed in CMA No.3854/14 etc.)

AND

Civil Misc. Application No.3708 of 2015 in Civil Review Petition No.Nil/15 in CMA No.4341/14 in CMA No.3854/14 in SMC No.3/09

(For permission to file and argue the CRP filed against the order dated 31.03.2015 passed in CMA No.3854 of 2014 etc.)

Syed Ali Zafar, Advocate Bahria Town (Pvt) Ltd. ...Applicant

Versus

Govt. of Punjab and others. ... Respondents

AND

Civil Misc. Application No.3853 of 2015 in Civil Review Petition No.Nil/15 in CMA No.4341/14 in CMA No.3854/14 in SMC No.3/09

(For permission to file and argue the CRP filed against the order dated 09.04.2015 passed in CMA No.3854 of 2014 etc.)

Syed Ali Zafar, Advocate Bahria Town (Pvt) Ltd. ...Applicant

Versus

Govt. of Punjab and others. ... Respondents

On Court Notice:

Syed Ali Zafar, ASC, In-person.
(in CMA.3704/15)
(also as applicant in CMAs 3708 & 3853/15)

Voluntarily Appeared: Mr. Abdul Latif Afridi, ASC.

Date of hearing: 3rd September 2015.

JUDGMENT

QAZI FAEZ ISA, J.-

CMA No.3708 & 3853 of 2015

Through these applications Mr. Ali Zafar seeks the review of the orders dated 31.3.2015 and 9.4.2015 respectively; however, as no ground has been made for review, these applications are dismissed.

2. This is an unfortunate matter, attending to disciplinary action that this Court has been compelled to initiate against an Advocate of the Supreme Court, namely, Mr. Ali Zafar. Mr. Ali Zafar made his submissions for almost five hours and spent a considerable proportion of the time setting out the background of the case. As correctly stated by him he had filed an application (CMA No.4341/2014) on 12.8.2014 on behalf of Bahria Town (Pvt.) Limited (hereinafter referred to as “**Company**”), wherein the Company sought to restrain the Government of Punjab from demarcating certain properties, submission of the demarcation report and review of order dated 5.6.2013; exception was also taken to order dated 18.12.2013, a chamber order authored by Justice Ejaz Afzal Khan and concurred by two other judges, reproduced hereunder:

“I don’t understand why demarcation of property is procrastinated on one pretext or another. Issuance of stay order or its refusal will not have much bearing on the determinations of demarcation of boundaries. I am also at a loss to understand as to why the spade work facilitating the resolution of dispute, is avoided. Let show cause notices to all concerned be issued requiring them to explain their position in behalf.

Sd/-
Ejaz Afzal Khan, J.
18.12.2013”

The matter was then listed in Court on 14.1.2015 before a Bench headed by the former Chief Justice, Justice Nasir-ul-Mulk, and the other members of the Bench were Justice Gulzar Ahmed and Justice Mushir Alam, when the following order was passed:

“Pursuant to our last order, the Forest Department has filed its objection (Civil Miscellaneous Application No. 78 of 2015) to the demarcation report. Syed Ali Zafar, ASC, the learned counsel appearing for the applicant in Civil Miscellaneous Application No.

4341 of 2014 wants time to go through the same and file response to the said objection, if need be.

CRL. ORIG. P. 110/2014

The applicant present in-person. Notice of this petition be given to the other parties who may respond to the same before the next date of hearing. **Re-list on 04.02.2015.”**

3. That pursuant to a specific date given by the Court, i.e. 4.2.2015, the case was listed for hearing on the said date, before a Bench comprising of Justice Ejaz Afzal Khan, Justice Azmat Saeed and Justice Mushir Alam, when the next date was given by the Court, i.e. 25.3.2015. On 25.3..2015 the case came up for hearing before a Bench comprising of Justice Jawwad S. Khawaja (as he then was), Justice Ejaz Afzal Khan and Justice Maqbool Baqar. However, another counsel not instructed by the learned Advocate-on-Record (“AOR”) representing the Company in another matter sought an adjournment on behalf of Mr. Ali Zafar, and the case was adjourned to 31.3.2015; this indulgence was shown despite the fact that there was no written adjournment request before the Court nor was the AOR in attendance. It would be appropriate to reproduce the following extract from the said order:

“As we do not have any adjournment request and nor has learned AOR appeared, we could have proceeded in the matter in the absence of Mr. Ali Zafar, ASC, however, in order not to cause any prejudice to his client, let these C.M.As come up on 31.3.2015.”

4. Mr. Ali Zafar pointed out that he submitted a general adjournment request on 18.3.2015 for the period “*from 24.3.2015 to 1.4.2015*” which was granted. At this juncture it needs to be noted:

- (a) The matter of a general adjournment is attended to by the Office and put up before the Chief Justice on the administrative side;
- (b) In the presence of Mr. Ali Zafar specific fixed dates were given by the Court on 4.2.2015 for 25.3.2015. It was therefore completely inappropriate for him to seek a general adjournment for a period the first day whereof was a day before the case was fixed for hearing. There were 49 days before the next fixed date of hearing. Needless to state that if there was an emergency in Mr. Ali Zafar’s life (which incidentally he has not pointed out any) he

would not have had a prescient warning of it on 18.3.2015. In any event he should have ensured that alternate arrangements were made to represent the Company / his client, but he did not to do so nor offered any explanation why he did not abide by his professional obligations;

- (c) Despite the aforesaid, indulgence was yet again shown to him (and in his absence) on 25.3.2015 when the case was again adjourned to 31.3.2015;
- (d) Incidentally, the Company had also engaged the services of a number of Advocates of the Supreme Court (“ASCs”), including, Messrs Aitzaz Ahsan, Zahid Nawaz Cheema, Raja Zafar Khaliq Khan, Syed Zahid Hussain Bokhari and Gohar Ali Khan Advocate (even though he is not an ASC). Raja Abdul Ghafoor and Mr. M. S. Khattak were the AORs.

5. That an undated application (hereinafter “**the said application**”) was submitted to the Office on 28.3.2015 as stated by Mr. Ali Zafar, but the office did not entertain the same and returned it to the AOR on 28.3.2015. In the said application it was also stated, that:

“... the honourable judge Justice Jawad S. Khawaja again and again directed and threatened the officer concerned of the Government to take action against the M/s Bahria Town otherwise his service may be harmed. This has created reasonably in the mind of the M/s Bahria Town as a litigant that the learned judge has already made up his mind” ... “This coupled with the fact that the Hon’ble Judge Mr. Justice Jawad S. Khawaja refused to accept the general adjournment of undersigned and has passed various observations and even passed order and also fixed the next date of hearing as 31st knowing that undersigned is not available... .”

The said application, which could only have been in the knowledge of the person/s who drafted it, was got prominently published. Mr. Ali Zafar professed his complete ignorance of the said application as well as its publication, and continued to represent the Company even after learning of the same. The allegations made in the said application were patently absurd as Justice Jawwad S. Khawaja (as he then was) was not even present when the Court on 4.2.2015 fixed it for 25.3.2015. On 25.3.2015 the case was listed before a three member Bench headed by Justice Jawwad S. Khawaja. As stated above Benches are

constituted by the Chief Justice and the cases fixed by the Office; Justice Jawwad S. Khawaja (as he then was) therefore could not possibly be responsible for the same. Moreover, only one member of the Bench that had heard the matter was singled out for opprobrium. The only conclusion that can be drawn is that the case was sought to be indefinitely delayed, to intimidate judges and create uncalled for controversy.

6. The next date in the matter was 2.4.2015 when Mr. Ali Zafar sought time to submit his explanation, which he had been called upon to submit in respect of the aforesaid matter. On his request he was granted time and the matter was adjourned to 9.4.2015. Mr. Ali Zafar submitted his ‘explanation’ by way of a concise statement wherein there was no element of an explanation, let alone regret or contrition. Instead he sought to justify what had transpired. Therefore, this Court vide order dated 9.4.2015, was constrained to call upon Mr. Ali Zafar to show cause why action, including suspension/removal from practice should not be taken against him as he appeared to be “*guilty of misconduct and conduct unbecoming of an Advocate*”. The order further stated that:

“The dignity and high standing of the legal profession and of Judges and Courts has to be defended for the sake of the independence of the Judiciary and Bar and for the effective administration of justice. This has to be done, if necessary, especially in the face of misconduct or conduct which is unbecoming of an Advocate. Such conduct must be curbed if the honour and dignity of the Bar and Bench are to be preserved.”

7. That on the next date (29.4.2015) Mr. Ali Zafar sought time to engage a counsel and his request was conceded and the matter was adjourned to 26.5.2015, when an adjournment was again sought on his behalf. “*In the interest of justice*” the matter was adjourned to 9.6.2015. On the next date the matter came up before a two member Bench, when a request was made on his behalf to place it before a three member Bench, consequently, it was adjourned and as requested it was ordered to be placed before a three member Bench. On the next date (23.6.2015) the counsel for Mr. Ali Zafar “*sought yet more time to inspect the file including the order sheet*” and the case was adjourned to 7.7.2015. On 7.7.2015 the case was again adjourned on the request of Mr. Ali Zafar and

yet again on 29.7.2015, when it was noted that, “*let this be the last adjournment.*” However, on the next date (11.8.2015) Mr. Ali Zafar once again sought an adjournment. He was again indulged, but it was again noted that, “*let it be the last adjournment*”. On 18.8.2015 the case was adjourned to 21.8.2015; it would be appropriate to reproduce the said order:

“Before proceeding with the show cause notice that has been issued on merits, one of us (Qazi Faez Isa, J.), called upon Mr. Ali Zafar to consider and state whether he wants to deal with the issue in accordance with law or whether he wants to reflect and make a statement for resolution of the matter without requiring the legal determination thereof. At this juncture, Mr. Abdul Latif Afridi, ASC appeared and stated that let the matter be adjourned so that he may have an opportunity of discussing the matter with Mr. Ali Zafar. Ms. Asma Jehangir, learned counsel for Mr. Ali Zafar states that as she is under treatment in Lahore, therefore, the matter be adjourned to 3.9.2015. As per request made by both the learned counsel, matter is adjourned to 3.9.2015.”

8. Despite the Court giving a date of Mr. Ali Zafar and his counsel’s choice, yet another application for adjournment was submitted in Court on 3.9.2015. As the matter had been repeatedly adjourned (as noted above) and as a great deal of the Court’s time had been consumed we finally declined the request and called upon Mr. Ali Zafar to make his submissions. Mr. Abdul Latif Afridi, learned ASC, however, requested that he may be permitted to again confer with Mr. Ali Zafar for a few minutes. As we had completed the hearing of the other listed cases we retired and re-assembled after fifteen minutes. The efforts made by Mr. Abdul Latif Afridi, possibly to persuade Mr. Ali Zafar to reconsider his stance, having made no impact.

9. We patiently heard Mr. Ali Zafar for approximately five hours; earlier Mr. Ali Zafar had also submitted a voluminous sixty-five page written reply excluding the annexures, which we have also reviewed. Mr. Ali Zafar contended that:

- (a) He had been granted a general adjournment on 18.3.2015 therefore when the case was listed for hearing in Court it should have been adjourned.

- (b) Order IV Rule 30 of the Supreme Court Rules, 1980 is *ultra vires* Article 10A of the Constitution, reproduced hereunder:

Order IV Rule 30 of the Supreme Court Rules

“Where, on the complaint of any person or otherwise, the Chief Justice or the Court is of the opinion that a Senior Advocate or an Advocate or an Advocate-on-Record has been guilty of misconduct or conduct unbecoming of an Advocate, with regard to any matter concerning the Court, the Chief Justice or the Court may either after affording him an opportunity of oral hearing, take such disciplinary action, including suspension and removal from practice of the Court, against him as it may deem fit, or refer to the Pakistan Bar Council for inquiry and action under the Legal Practitioners and Bar Council Act, 1973.

Article 10A of the Constitution

“For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.”

- (c) If the Court wants to initiate contempt action an inquiry should be initiated to ascertain the facts and the matter should be referred to the Pakistan Bar Council.
- (d) The said application was submitted by Raja Zafar Khaliq Khan who is authorized to represent the law firm of ‘Mandviwala & Zafar’ and is also authorized to represent all the clients, including the Company.
- (e) He neither signed the said application nor the undated letter written on the letter paper of ‘Mandviwalla & Zafar Advocates, therefore, he cannot be held responsible for the contents thereof.

10. We shall first attend to the legal argument of Mr. Ali Zafar that Order IV Rule 30 of the Supreme Court Rules, 1980 (hereinafter “**Rule 30**”) violates Article 10A of the Constitution. The principle contained in Article 10A of the Constitution is of long standing; Article 10A however was specifically incorporated into the Constitution vide the Eighteenth Amendment in the year 2010. The learned counsel did not cite a single precedent in support of his contention. The Supreme Court Rules, including Rule 30, has been in force for thirty-five years. Rule 30 seeks to ensure the dignity and high standard of

Senior Advocates, Advocates of the Supreme Court and Advocates-on-Record and if they are “*guilty of misconduct or conduct unbecoming of an Advocate, with regard to any matter pending in the Court*” disciplinary action be taken against them, “*including suspension and removal from practice of the Court*”, “*after affording him an opportunity of oral hearing*”. In this matter the rights guaranteed to Mr. Ali Zafar have been fully secured, and no arbitrary or hasty decision has been taken. As the facts narrated above amply demonstrate, Mr. Ali Zafar availed of (1) every opportunity to explain himself, (2) submitted a written explanation, (3) submitted a reply to the show cause notice, and (4) argued at length for almost five hours, ensuring complete and utter fairness and due process requirements. Rule 30 cannot be categorized as being contrary to Article 10A of the Constitution. Furthermore, what is expected of an Advocate is not necessarily what is expected of every other citizen. Article 18 of the Constitution which entitles every citizen to “*enter upon any lawful profession or occupation*” is itself subject to “*the regulation of any trade or profession by a licensing system*”. The profession of advocates is regulated by the laws mentioned above.

11. The Pakistan Bar Council has framed the Pakistan Legal Practitioners & Bar Councils Rules, 1976, incorporating the ‘Canons of Professional Conduct and Etiquette of Advocates’ in Chapter XII, which is sub-divided into different categories. Category ‘C’ deals with Advocates’ “*Duty to the Court*”; requiring Advocates “*to maintain towards the Court a respectful attitude*” (Rule 159); and not to get published in newspapers anything with regard to a pending matter and “*it is unprofessional to make them anonymously*” and such publication, “*are to be condemned*” (Rule 164). Under category ‘D’ which deals with Advocates’ “*Conduct with Regard to the Public Generally*” is prescribed the duty of an Advocate to appear in Court and “*if it is not so possible to make satisfactory alternative arrangements*” (Rule 166); “*nor should any Advocate render any service or advice involving disloyalty to the law ... or disrespect the judicial office which they are bound to uphold*” (Rule 172).

12. Section 54 of the Pakistan Legal Practitioners and Bar Councils Act, 1973 also mentions that an order of suspension of an Advocate from practice can be passed after

hearing such Advocate if in the opinion of the Court he has committed an act of grave indiscipline or grave professional misconduct and his suspension is expedient or necessary in the interest of administration of justice.

13. The said application stated that it had been “*Drawn and Settled By: Syed Ali Zafar*” and signed by Raja Zafar Khaliq Khan, ASC “*for and on behalf of Syed Ali Zafar ASC*”. It was also signed by Raja Abdul Ghafoor, AOR. However, Mr. Ali Zafar insisted that it was filed without his signature, direction or involvement. To the extent it does not contain Mr. Ali Zafar’s signature, he is correct. The contents of the said application make it very clear that it could only have been filed under his instructions as it refers to the general adjournment granted to him “*from 24-03-2015 to 01-04-2015*” (in paragraph 2). Since Raja Zafar Khaliq Khan himself was an ASC in the case there was no reason for him to move such an application as he was not on general adjournment. The said application, as stated by Mr. Ali Zafar, was returned by the Office on 28.3.2015. Thereafter, an undated letter, which we have been informed was submitted on 31.03.2015, was addressed to the Hon’ble Chief Justice of Pakistan. This letter is on the stationery with the letterhead of “*Mandviwalla & Zafar Advocates*”, and at the end of the letter (on page 4) it concludes with, “*Your’s Sincerely Syed Ali Zafar, Advocate Supreme Court*”, where under it is written by hand, “*through Raja Zafar Khaliq Khan, ASC*”. Mr. Ali Zafar was also correct in stating that the letter is not signed by him, however, the contents of the letter leave no doubt that it was drafted by or issued on Mr. Ali Zafar’s instructions as it is in his personal capacity, stating as it does: “***undersigned** has applied for a general adjournment for period from 24-03.2015 to 01.04.2015 being out of Pakistan*” (paragraph 2), “*that the Court had however, refused to accept the general adjournment and passed the order in **my** absence*” (paragraph 3), “*refused to accept the general adjournment of the **undersigned***” (paragraph 8). The words used in the letter itself (‘*undersigned*’ and ‘*my*’) effectively and emphatically concludes its authorship. Even though Mr. Ali Zafar offered no explanation in this regard we took it upon ourselves to extend him the benefit of doubt, however, Mr. Ali Zafar insisted that Raja Zafar Khaliq Khan was a member of his firm when the letter was written, was authorized to use his stationery, continues to be in his firm and is “*like a son*”. The said patronization of an adult, equal in age if not older to Mr. Ali Zafar, was in

bad taste; however, we are not concerned with this. What is of concern is that Mr. Ali Zafar was not forthcoming in assuming responsibility for either the said application or the letter. He instead pointed to the affidavit filed by Raja Zafar Khaliq Khan and pointed out that Raja Zafar Khaliq Khan had admitted writing and submitting both. In other words Mr. Ali Zafar wanted to make Raja Zafar Khaliq Khan a scapegoat. We can not be unmindful of the fact that Raja Zafar Khaliq Khan's position in the firm of 'Mandviwala & Zafar', of which Mr. Ali Zafar is a partner, is not one of equality. In any event under the Partnership Act, 1932 a partner is "*liable for all acts of the firm done while he is a partner*" (section 25) and is also liable for "*the wrongful act or omission of a partner*" (section 26). Therefore, Mr. Ali Zafar would not be able to absolve himself of responsibility by seeking to shelter behind the affidavit of Raja Zafar Khaliq Khan. It may be mentioned that Raja Zafar Khaliq Khan ASC is also facing disciplinary proceedings which is attended to separately.

14. There is yet another factual aspect of the case established on the record. On 31.3.2015 Mr. Aitzaz Ahsan, Senior ASC, categorically stated a number of times (which has been recorded in the order) that he had received telephonic instructions from Mr. Ali Zafar informing him about the said application for adjournment and for placing the matter before another Bench of which Justice Jawwad S. Khawaja (as he then was) was not a member. Mr. Aitzaz Ahsan's statement was recorded when Raja Zafar Khaliq Khan was present in Court.

15. From the facts on record it has also become clear that Mr. Ali Zafar wanted to avoid proceeding with the case. As noted above a specific fixed date was given by the Court on 4.2.2015 for 25.3.2015 in the presence of Mr. Ali Zafar. It was therefore completely inappropriate for him to seek a general adjournment for a period the first day whereof was a day before the case was fixed for hearing, when there were 49 days before the next fixed date of hearing when he could have availed of a general adjournment if need be. This is also not a case of a sudden emergency that would be occurring on 24.3.2015 as he would not have had a prescient warning of it on 18.3.2015 (the date he submitted his application seeking general adjournment). In any event he should have ensured that alternate

arrangements were made to represent the Company / his client, but he did not do so nor offered any explanation why he did not abide by his professional obligations. The seeking of a general adjournment with a view to avoid the hearing of the case was thus evidently an abuse of the process of the Court.

16. The contents of both the said application and the letter conclusively establish that their author was Mr. Ali Zafar himself. This is further established from the fact there was no reason for Raja Zafar Khaliq Khan to cite the general adjournment of Mr. Ali Zafar as he too was engaged as an ASC in the case and was not on general adjournment. It also appeared to be of little consequence to Mr. Ali Zafar that the contents of said application were extensively and prominently published in the media, which could only have been done either by a member of his firm or by the Company. The publication was disrespectful of a judge of this Court and of the Institution. While Mr. Ali Zafar has been granted umpteen opportunities to explain himself the judge against whom unsubstantiated allegations were leveled was given none.

17. Mr. Ali Zafar has committed grave professional misconduct. If at all he had any apprehension about any judge hearing his case he should have adopted a legal course to have it redressed, which he did not do. Whilst we were not obliged to do so, we also enquired from Mr. Ali Zafar to cite a single reason why the said judge would be biased or prejudiced towards his client, but he had nothing to say. Mr. Ali Zafar's grave unprofessional conduct is further established in his own hand, writing as he did in his explanation, that:

“21. That it is now of course for the learned Members of the Bench about whom the Chairman Bahria Town (Pvt.) Limited sustained the impression of prejudice and bias to decide after weighing the probability of the impression gained by the client whether the learned Judge should recluse himself from the Bench or otherwise.

However there are many glorious and citable examples of other Hon'ble Judges who, on account of much less ground for bias, have gracefully reclused themselves from hearing the case when any of the parties mentioned of the possible bias before them.”

From the aforesaid it transpired that rather than reflecting upon his own conduct he thought fit to further castigate the “*Members of the Bench*” because the Chairman of the Company (his client) “*sustained the impression of prejudice*”. Surprisingly, whereas previously the recusal of only one judge was sought Mr. Ali Zafar himself now attacked the entire Bench by his use of the phrase “*Members of the Bench*”, and this was not claimed to be on account of a typographical error. Mr. Ali Zafar’s conduct demonstrates that he has overzealously pursued his client’s interest / desires / whims rather than attending to the case as a professional. He forsook his duty to the Court and the conduct expected of an advocate. As if this was not enough, throughout these proceedings Mr. Ali Zafar has shown no regret, let alone remorse, despite being provided with repeated opportunities. A senior member of the Bar also intervened, but all to no avail. Mr. Ali Zafar’s conduct has demeaned the noble profession of law and hampered the administration of justice. Instead of attending to the case and to competently pursue the interest of his client, he committed grave professional misconduct: He (1) used inappropriate measures to have the case adjourned thus wasting the Court’s time and public resources, (2) left the case unattended midstream, (3) authored the said application and the said letter, but pretended to have no knowledge about them, (4) was oblivious of the concepts of legal authorizations and liability, (5) took shelter behind the affidavit of his associate, and (6) was responsible for, knew or condoned the said publication in the media. He thus breached the stipulated Canons of Professional Conduct and Etiquette of Advocates, and in particular violated Rule 159, 164, 166 and 172 (mentioned above).

18. Mr. Ali Zafar is guilty of grave professional misconduct and obdurately persisted in the mistaken belief that he did nothing wrong. Ordinarily under the given circumstances an advocate can be barred from practicing before this Court forever, however, as this is his first transgression, therefore as a matter of grace we suspend his license as Advocate Supreme Court rather than removing his name from our Roll of Advocates. This concession has been shown to enable Mr. Ali Zafar to reflect upon his conduct. If after the expiry of one year, and provided he has learnt to understand the responsibilities of his profession and expresses remorse, Mr. Ali Zafar may apply to the Court to have his license to practice before the Supreme Court restored.

19. In conclusion we may state that it is in the interest of both the Bench and the Bar for advocates to uphold at all times the dignity and high standards of their profession and abide by the prescribed canons of professional conduct and etiquette.

Chief Justice

Judge

Judge

Announced in open Court

On _____
At Islamabad

Qazi Faez Isa, J

APPROVED FOR REPORTING
(M. Tauseef)