

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Tariq Parvez
Mr. Justice Amir Hani Muslim

SUO MOTO CASE NO. 18 OF 2010

(Suo Moto Action regarding violation of Public Procurement Rules, 2004 in procurement loss of billions of rupees of exchequer caused by National Insurance Company Ltd.)

On Court Notice:	Maulvi Anwar-ul-Haq, Attorney General for Pakistan
For Establishment Division:	Mr. Sohail Ahmed, Secretary
For M/o Information:	Mr. Taimoor Azmat Osman, Acting Secretary
For M/o Interior:	Nemo
For the FIA:	Nemo
Date of hearing	: 25.7.2011

ORDER

Iftikhar Muhammad Chaudhry, CJ.— Brief facts of the case are that on 06.05.2010, a letter was addressed to Mr. Ayaz Khan Niazi, Chairman, National Insurance Company Limited (NICL), by Transparency International Pakistan, copy of which was also forwarded to Registrar of this Court. The summarized allegations leveled in the letter are as follows:-

- "1. Procurement of 803 kanal – 19 Marla Plot in Lahore reportedly belonging to Ex-MNA Mr. Habibullah Warraich, which had market value of Rs.300,000/- per Kanal, whereas NICL was buying it at Rs.2,000,000/- per Kanal.

2. 27000 sft. Office space in Dubai in Liberty tower was purchased in July 2009 @ UAE Dirham 2,700 per sft., against the market price of AED 1,200 per sft. allegedly, causing loss to exchequer of Rs.900 million.
3. 10 Acre plot purchased in Korangi Deh Pihai, in August 2009 @ Rs.90,000,000/- per acre, against maximum market price of Rs.20,000,000/- per acre, causing loss Rs.70,000,000/- per acre.
4. Award of Contracts of painting works and furniture to M/s Casa Bella Lahore, Karachi for Rs.26.987 million and at Islamabad for Rs.9.31 million, who was not a license holder of Pakistan engineering Council. The tender for Karachi was for 6 floors but the Contractor has been asked to paint only 4 floors.
5. Land was purchased in Lahore in the year 2009 from Mr. Mohsin Warraich for Rs.1.5 billion, whose market value was Rs.30 million causing loss to Exchequer Rs.1.2 billion."

Similar application was submitted by one Asif Ahmed.

2. The matter was registered as HRC. No.3379-S/2010 and vide letter dated 12.02.2010, report was called from Chief Secretary Punjab, who submitted his report on 4.3.2010 stating therein that NICL intended to purchase a piece of land for developing a housing colony at Lahore at exorbitant price to benefit a few persons, who were behind the deal.
3. Vide letter dated 24.3.2010 report was called from Secretary Board of Revenue, Punjab, who in his report dated 2.4.2010 narrated the same answer as was given by the Chief Secretary, Punjab. Thereafter, vide order dated 26.4.2010 the matter was referred to Chairman NAB for conducting discreet inquiry and report. The Chairman NAB, submitted reports dated 19.5.2010, 1.6.2010 and 14.6.2010. In the light of the reports submitted by the authorities, the matter was then registered as SMC No.18/2010 and was fixed before the Court on 12.10.2010.

4. On 12.10.2010, when the matter was taken up in Court as Suo Moto Case, the Secretary Commerce was directed to lodge criminal complaint/report with F.I.A., in respect of above transactions against all concerned, as a result whereof a case FIR No.24/2010 dated 12.10.2010 under sections 409, 420, 109 PPC read with 5(2) PCA was registered with FIA Circle, Lahore. However, this Court feeling dissatisfied with the above proceedings, directed the FIA to accelerate the proceedings; cause arrest of the accused, particularly the influential persons; and to register cases regarding other incidents.

5. On 09.12.2010 Mr. Zafar Ahmed Qureshi, the then Director, FIA submitted a report stating therein that at Lahore, another FIR No. 29/2010 was registered against Ayaz Khan Niazi and others, whereas, in FIR No.24/2010, one Habibullah Warraich was arrested and Rs.1.4 billion were recovered from him, whereas, steps were being taken to cause arrest of Mohsin Habibullah Warraich. The complete details of the recoveries and investigation are not being given here so it may not cause any prejudice to either of the parties. In the meanwhile influential persons tried to interfere in the investigation to get the favorable results.

6. It is to be noted that when under the supervision of Mr. Zafar Ahmed Qureshi the investigation was likely to make effective progress, he was abruptly transferred to National Police Foundation as Managing Director, on the pretext that after his promotion in Grade 21 he could not continue as a Director in FIA. An exception on his transfer was taken by this Court and competent authorities were compelled to allow him to continue investigation of the case. Thus, on 25.01.2011 Mr. Qamaruzzaman Chaudhry, Secretary, Ministry of Interior, Government of Pakistan placed on record the notification dated 24.01.2011, issued by the Government of Pakistan whereby Mr. Zafar Ahmed Qureshi, was appointed as Additional Director General, FIA in addition to his other assignment to supervise investigation of NICL case at Lahore.

7. Mr. Zafar Ahmed Qureshi, Addl. D.G. submitted report on 17.2.2011, according to which, FIA had collected incriminating evidence against Mohsin Warraich, Habibullah Warraich, Moonis Elahi and Raja Muhammad Ali in accordance with law. He, however,

expressed that during discharge of his function, he was threatened of dire consequences by some persons. He recorded his statement in open Court that in case of his unnatural death, Chaudhry Shujat Hussain, Chaudhry Pervez Elahi, Chaudhry Wajahat Elahi, Moonis Elahi, Major Habibullah Warraich and Mohsin Habib Warraich, would be responsible for the same. In this regard directions were issued to the Attorney General for Pakistan to take all necessary steps to ensure that Mr. Zafar Ahmed Qureshi would be allowed to conduct the investigation of the cases freely without facing any threat or consequences from anyone. In response to this situation CMA No.1710 of 2011 titled as Ch. Shujaat Hussain v. Zafar Ahmed Qureshi was moved wherein a request was made that Mr. Zafar Ahmed Qureshi be proceeded against as he had made a false statement before this Court noted above. This application is pending for decision.

8. On 21.3.2011, Mr. Zafar Ahmed Qureshi, Addl. D.G. FIA submitted report mentioning therein that in case FIR No.24/2010 with regard to land equal to 804 kanals, an amount of Rs.1,686,300,000/- had been recovered and Challan against the accused persons had been forwarded to the court of competent jurisdiction; in case FIR No.29/2010 an amount of Rs.80,000,000/- had been recovered and in FIRs No. 46/2010 and 05/2011, accused including Ch. Moonis Elahi had been arrested and interim Challan had been forwarded to the court of competent jurisdiction. However, he submitted that he was being maligned unnecessarily in the media by some of the arrested persons. A Civil Miscellaneous Application No.874/2011 was also filed on behalf of Ch. Shujat Hussain and others containing the prayer for transfer of investigation from Mr. Zafar Ahmed Qureshi to some other officer.

9. On 14.4.2011 Mr. Zafar Ahmad Qureshi, Addl. Director General had provided following breakup of the recovered amounts relating to NICL:-

- “(i) FIR No.24 of 2010: An amount of Rs. 1.6863 Billion against the property measuring 804 Kanal has been recovered and transferred to the account of NICL.*
- (ii) FIR No.29 of 2010: Commercial plot measuring 20 kanals at Airport Road, Lahore was purchased by NICL for an excessively*

exorbitant price Rs. 1.06 Billion which by all surveyor report, was highly inflated price. An amount of Rs. 80.400 million was recovered and deposited in account of NICL. For the balance amount of Rs.42 Million, postdated cheques were deposited by one Muhammad Akram Warraich (uncle of Mohsin Habib Warraich) before the learned Special Judge (Central) Lahore. These postdated cheques and interest thereon was made recoverable by six monthly installments in a period of about five years."

10. It is pertinent to mention here that on 25.1.2011, when the Court inquired the reason for not arresting Amin Qasim Dada, who was one of the directors of NICL, Mr. Zafar Ahmed Qureshi explained that as per version of Moazzam Jah, Director FIA, Karachi, Amin Qasim Dada used to sit with DG, FIA in his camp office, therefore, he could not cause his arrest. This statement was confirmed by Mr. Moazzam Jah. In the said circumstances the Court was constrained to observe that *"it seems that instead of allowing his Director to make progress in the case, he (DG, FIA) is providing shelter to the accused persons"*. On making such statement and his decision to proceed against influential persons noted above, they started creating trouble for him to investigate the case smoothly.

11. During investigation of the case the FIA officials contacted with Serious Organized Crime Agency (SOCA), UK for obtaining the information regarding the foreign currency accounts of Moonis Elahi, one of the accused in FIR No. 46/2010, and according to reports available on record he had an account in EFG Private Bank, UK having balance of £ 1,1,38792.53 and another account in Barclays Bank in the name of Beenish Khan (wife of Mohsin Habib Warraich) having a balance of £ 102,307.63 (transferred from the account in EFG Private Bank Ltd.). The then D.G. FIA, Waseem Ahmed kept the said information pending with him for 21 days and this fact has been verified by Mirza Sultan M. Saleem, Director, FIA in his statement recorded before the investigation team. Later on he was also transferred from FIA.

12. Malik Muhammad Iqbal was posted in place of Waseem Ahmad, DG FIA. He, instead of facilitating Mr. Zafar Ahmad Qureshi in

accomplishing the task assigned to him by this Court, to probe into corruption cases, wrote a letter dated 15.4.2011 to the Secretary, Ministry of Interior, Government of Pakistan, contents whereof are reproduced hereinbelow:

*"OFFICE OF THE DIRECTOR GENERAL
FEDERAL INVESTIGATION AGENCY
ISLAMABAD*

No.PS/DG/FIA/2011/208

April 15, 2011

*The Secretary, Ministry of Interior,
Government of Pakistan,
Islamabad*

Subject: **NOTIFICATION**

Kindly refer to your office Notification No.3/6/2011-Estt (FIA), dated 09-02-2011, in pursuance of the Notification issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division No.F.12/3/81-E-3(Police) dated 24-01-2011 with respect to posting of Capt. (R) Zafar Ahmed Qureshi, (PSP/BS-21) as member of the FIA against the post of Additional Director General/FIA to supervise the investigation of NICL case at Lahore.

2. It will not be out of place to mention that the interim challans in NICL cases have been submitted in the Court of competent jurisdiction on 11-04-2011 and a report thereof has already been submitted in the Honourable Supreme Court of Pakistan on 14-04-2011 by the said officer.

3. The matter is brought to your notice for further necessary action.

*Sd/-
Malik Muhammad Iqbal, PSP*

Director General/FIA"

13. In view of the letter reproduced hereinabove, as is evident, the Ministry of Interior sent a letter dated 16.4.2011 to the Establishment Division stating therein that *"please find enclosed a reference received from Director General, Federal Investigation Agency (F.I.A) regarding the latest position of investigation in NICL case at Lahore"*. Accordingly the Establishment Division, on 18.04.2011, issued following Notification: -

“F.No.12/3/81-E-3 (Police)
GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

Islamabad, the 18th April, 2011

NOTIFICATION

Capt. (Retd) Zafar Ahmed Qureshi (PSP/BS-21) was posted as Additional Director General, Federal Investigation Agency, under Ministry of Interior, in addition to his present assignment as Managing Director, National Police Foundation, to supervise the investigation of NICL case vide this Division's Notification of even number, dated 24-01-2011.

2. The Director General, Federal Investigation Agency has intimated that the recoveries have been made and the Chalan submitted in the said case. Therefore, the additional charge of the officer as Additional Director General, Federal Investigation Agency is hereby withdrawn with immediate effect.

-Sd-

(Shahzad Asif)
Section Officer to the
Government of Pakistan”

14. The Court was *prima facie* of the opinion that Malik Muhammad Iqbal, D.G. FIA by sending a letter dated 15.04.2011, reproduced hereinabove, had created obstacles in investigation of the case which was being conducted by Mr. Zafar Ahmad Qureshi, in pursuance of directions of this Court and in this manner had disturbed, disobeyed and disregarded the order/direction of this Court; and had interfered with, the process of law and due course of judicial proceedings by getting the Additional DG FIA, disassociated from the investigation, therefore, vide order dated 10.05.2011, show cause notice of contempt of Court was issued to him under Article 204 of the Constitution read with section 3 & 5 of the Contempt of Court Ordinance (Ordinance V) of 2003 to explain as to why he should not be proceeded against for the violative acts detailed therein interfering in the affairs of this Court by approaching the Government authorities for the purpose of getting notification dated 18.4.2011 issued on the

basis of which an officer taking deep interest in recovery of a huge amount of the public exchequer, had been disassociated from the investigation.

15. Malik Muhammad Iqbal, DG, FIA initially filed his explanation to the show cause notice vide C.M.A. No.1836 of 2011, then filed reply to the show cause notice. In his reply he also mentioned that on 29.4.2011, well before the order passed by this Court on 10.5.2011, he wrote to the Secretary, Ministry of Interior specifically requesting that the notification in question may be withdrawn and the earlier notification of 24.1.2011 be restored, "so that Mr. Zafar Ahmed Qureshi may complete the investigation as Member of FIA by adjusting him against the post of Additional Director General FIA in addition to his present assignment". However, the authority did not accept his request and Mr. Zafar Qureshi was not transferred back.

16. On 03.06.2011 after having discussed the case at some length, charge was framed against Malik Muhammad Iqbal, DG FIA who submitted reply which reads as under: -

"Respectfully submitted that the undersigned holds the apex court in the highest esteem and respect. I do not want to contest the charge. However, most respectfully I submit that it was not my intention or object to undermine the authority of this Hon'ble Court and subvert its orders/directions. I stand by my earlier statement dated 14.5.2011 submitted through my counsel Mr. Makhdoom Ali Khan. I humbly and respectfully seek mercy and clemency of the august Court and by way of extenuating circumstance I submit that I am superannuating on 14.07.2011 and I shall immediately proceed on leave and not serve."

On the same date, notice was issued to the Secretary Interior to appear along with record of the case including the summaries, on the basis of which case was forwarded to the Secretary Establishment for issuing the notification, disassociating Mr. Zafar Ahmed Qureshi from the said case. Secretary Establishment was also asked to remain in attendance with complete record.

17. On 8.6.2011, Mr. Abdul Rauf Chaudhry, Secretary Establishment appeared and stated that he had not floated any summary to the competent authority/Prime Minister regarding transfer of Mr. Zafar Ahmed Qureshi, and the notification dated 18.4.2011 was issued

without any summary on the verbal orders of the competent authority on 18.4.2011 at about 10/11 pm., confirmation of which was sought by him on 20.4.2011 from the Prime Minister's Secretariat's (Public).

18. Above contempt matter was reserved for judgment, which was to be announced on 16.6.2011 but on this date notices for Contempt of Court were ordered to be issued to M/s Qamar Zaman Ch., Secretary, Ministry of Interior; Abdul Rauf Ch. Secretary, Establishment Division; and Khushnood Lashari, Principal Secretary to the Prime Minister for willful defiance of the orders of this Court passed on 24.1.2011 by withdrawing notification dated 18.4.2011. A separate Criminal Original Petition No.50/2011 was registered against the above named three officers. However, it was further observed that the judgment in the contempt matter with regard to Muhammad Iqbal, D.G. would be announced after hearing above named officials.

19. This Court invariably exercises restraint instead of passing any coercive order but in view of above circumstances it having been left with no option, was constrained to pass order dated 1.7.2011 suspending the operation of notification dated 18.4.2011, issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division, whereby services of Mr. Zafar Ahmad Qureshi were withdrawn as Additional Director General, FIA. The incumbent D.G. FIA was directed to extend all necessary assistance to him. Concluding para of the order dated 1.7.2011 is reproduced hereinbelow: -

"In the facts and circumstances when such like honest and upright officer. Who has always upheld the national interest and had taken all manner by issuance of the notification dated 18.4.2011 by the Establishment E-3(Police) dated 18.4.2011 issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division till further orders. The incumbent D.G., Qureshi for carrying out investigation of the cases registered at Lahore in respect of N.I.C.L scam and any other matter connected and related thereto in terms of earlier notification dated 24.1.2011 issued by the Establishment Division. No interference of any nature whatsoever shall be caused either by D.G., FIA or by any other authority and he would take over the charge of the investigation of the cases of N.I.C.L. scam at Lahore immediately and would be free to take all such steps

and adopt all measures in discharge of his duties necessary for conducting transparent investigation. He shall, however, be submitting fortnightly reports to Mr. Justice Amir Hani Muslim in Chambers for perusal."

20. After passing of the order dated 1.7.2011, on the same day the following members of the investigation team working under the supervision of Mr. Zafar Ahmad Qureshi were transferred to different places by the incumbent D.G, FIA: -

- (i) Mr. Javed Hussain, Dy. Director
- (ii) Mr. Muhammad Ahmad, Assistant Director
- (iii) Mr. Khalid Anees, Assistant Director and
- (iv) Mr. Muhammad Sarwar, Inspector

On the next day i.e. 2.7.2011 Mr. Zafar Ahmad Qureshi was served with a notice to explain within 24 hours of the receipt of the explanation that the news item was flashed in the electronic media on 2.7.2011 mentioning that he had written a letter to D.G. FIA to the effect that transfer orders of various officers of FIA were irregular and asked him to withdraw the said orders forthwith, but he had failed to contradict the said news, giving the impression that the said news was correct. After receipt of explanation, Mr. Zafar Ahmad Qureshi was suspended and proceedings were initiated against him vide order 4.7.2011, which is reproduced hereinbelow: -

"No.1/7/2011-Secy(1)
GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR

<> <> <>

Islamabad, the 4th July, 2011

ORDER OF SUSPENSION

I am directed to inform you that on appearance of a news item on 2.7.2011 on the electronic media your comments were noted and keeping in view the decorum and smooth running of the institution of the Federation you were required to explain your position vide.No.F.12(3)81E-3(Police), dated 2.7.2011, issued by Establishment Division as to why you should not be proceeded against under the Government Servants (Efficiency and Discipline) Rules 1973 for misconduct. Prima-facie your said

actions are in sheer violation of provisions of rules 18 and 22 of the Government Servant (Conduct) Rules 1964.

You were accordingly given a fair chance of rendering an explanation within 24 hours on receipt of the above letter and it was made abundantly clear that failing this it shall be presumed that you have no explanation to offer and you would render yourself liable to be proceeded against under the rules.

That you submitted your explanation within stipulated time which was examined at the competent level and after due consideration was found unsatisfactory. In view of the foregoing, competent authority has been pleased to order to place you under suspension by exercising powers under Rule 9 of the Government Servants (Efficiency and Discipline) Rules 1973 with immediate effect.

Detailed charge sheet and statement of allegations shall follow.

*(FIDA HUSSAIN AFRIDY)
Deputy Secretary"*

21. The matter came up before this Court on 7.7.2011 when copy of the explanation, reply and the suspension order dated 4.7.2011 were produced in Court. At that stage learned Attorney General was confronted with the news items published in all the leading newspapers wherein it was mentioned that on account of some political intervention action against Zafar Ahmad Qureshi has been initiated and he had been placed under suspension, learned Attorney General stated that till he took instructions, departmental proceedings against Mr. Zafar Ahmad Qureshi would not be undertaken. D.G. FIA was also directed to reverse the transfer orders of the officers/members of the investigation team of Mr. Zafar Ahmad Qureshi immediately and post them at the places where they were directly performing their duties pending decision of this matter.

22. Despite of restraining order dated 7.7.2011 fresh proceedings were initiated against Mr. Zafar Ahmad Qureshi on the basis of some other notice. As such vide order dated 13.7.2011 all notices and or communications issued to Mr. Zafar Ahmad Qureshi were suspended and the Secretary Interior or any other authority competent in that

behalf was restrained from proceeding departmentally against him without prior permission of this Court.

23. On 14.7.2011 it was brought to the notice of the Court that officers/members of the investigation team of Mr. Zafar Ahmad Qureshi had been transferred and posted back to the places where they were performing duties.

24. One issue, which requires determination is, as to whether in order to nullify the order of this Court dated 01.07.2011, reproduced hereinabove whereby Mr. Zafar Ahmad Qureshi was reposted as Add. DG FIA to conduct/supervise the investigation in NICL cases, was ordered to be proceeded departmentally in pursuance of letter dated 2nd July, 2011 originated under the signature of Mr. Tehsin Anwar Ali, DG FIA. A perusal of this letter indicates that the allegations against Mr. Zafar Ahmad Qureshi were that he had leaked the official information to private channels about issuance of letter by him to D.G., FIA for cancellation of transfer orders in respect of some FIA officials. It was further alleged that the said letter was issued without lawful authority and the copy of the same was sent to the Registrar of this Court and Secretary Interior without following proper channel. At this stage it would be appropriate to reproduce the latter dated 2.07.2011 issued by Mr. Zafar Ahmed Qureshi, which reads as under:-

*"The Director General
Federal Investigation Agency
Islamabad*

Subject: Notification for transfer/posting orders No.A-793/Admn/2011 dated 01.07.2011

Reference to your notification, the following officials which were working as a team in N.I.C.L scam under the direct supervision of the undersigned has been transferred vide letter no.No.A-793/Admn/2011 dated 01.07.2011 may please be cancelled immediately in compliance of the order of the Honourable Supreme Court of Pakistan No.S.M.C. No.18/2010, etc. –SCJ dated 01.07.2011 (Copy enclosed). In which it has been directed

"No interference of any nature whatsoever shall be caused either by D.G. FIA or by any other authority and he would take over the charge of the investigation of the cases of N.I.C.L scam at Lahore immediately and would be free to take all such steps and adopt all measures in discharge of his duties necessary for conducting transparent investigation."

		From	To
1.	Mr. Javed Hussain, Deputy Director (BS-18)	Corporate Crime Circle, FIA, Punjab, Lahore	FIA, ACC, D.I. Khan, KPK Zone

- | | | | |
|----|---|------------------------------|---------------------------------------|
| 2. | Mr. Muhammad Ahmed, Asstt. Director (BS-17) | FIA, ACC Punjab Zone, Lahore | FIA, AHTC, Turbat Baluchistan Zone. |
| 3. | Mr. Khalid Anees, Asstt. Director (BS-17) | FIA, ACC Punjab Zone, Lahore | FIA, ACC Peshawar, Zone. |
| 4. | Mr. Muhammad Sarwar, Inspector (BS-16) | FIA, CBC Punjab Zone, Lahore | FIA, AHTC, Gowadar, Baluchistan Zone. |

The subject transfer of N.I.C.L member team intentionally at far flung places amounts to create hindrance and obstacles in the smooth process of investigation, which amounts to the non-compliance of order of the Honourable Supreme Court of Pakistan. Please ensure strict compliance.

*Signature of joining officer
(Capt. (Ret) Zafar Ahmad Qureshi) PSP
Managing Director, National Police Foundation*

25. In pursuance of letter dated 2.7.2011 issued by Tehsin Anwar Ali, D.G. FIA, letter of explanation dated 2.7.2011 was issued by Afzal Latif, Joint Secretary (E), Cabinet Secretariat, Establishment Division to Mr. Zafar Ahmad Qureshi, which reads as under: -

"Subject: EXPLANATION

The electronic media on the evening of July 2, 2011 has been consistently carrying news items alleging that you have written a letter to Director General, FIA to the effect that the transfers ordered by him of various officers of the FIA are irregular and illegal and have asked the Director General, FIA to withdraw the said orders forthwith.

2. This news in the electronic media has not been contradicted by you, giving the impression that the said news reports are correct.

3. Prima facie, your actions appear to violate provision of Rules 18 & 22 of the Government Servant (Conduct) Rules, 1964.

4. You are hereby directed to explain why should not be proceeded against under the E&D Rules, 1973, for misconduct.

5. Your explanation should reach the undersigned within 24 hours of receipt of this letter, failing which it shall be presumed that you have no explanation to offer and you shall be liable to be proceeded against under the Rules.

*(Afzal Latif)
Joint Secretary(E) "*

26. In response to the said letter, Zafar Ahmad Qureshi gave the following explanation: -

"Subject: EXPLANATION

Please refer to your two letters No.F.12(3)81e3(Police), dated 2.7.2011 (copies enclosed).

2. *It is correct that I wrote a letter to DG FIA No.A/234/NPF/11/950-52, dated 2.7.2011 (copy enclosed) whereby I requested that the officers working earlier assisting the investigation of NICL scam and the transfer of these officers who were assisting me in the investigation of NICL scam should be cancelled as it would not be possible for me to complete the investigation of NICL scam as directed by the honourable Supreme Court of Pakistan (copy enclosed). However, I did not give the press release of the news as I am a Government Servant and habitually avoid contact with the press.*

*(Zafar Ahmad Qureshi)
Managing Director/
ADG FIA at Lahore
3.7.2011"*

27. As far as the issue of committing misconduct by Mr. Zafar Ahmed Qureshi is concerned, it has to be examined in the background of the case as well as the events that have taken place after passing of the order dated 01.07.2011, details of which have already been stated hereinabove, more particularly the registration of criminal cases vide FIRs No. 46/2010 dated 27.12.2010 and 05/2011 dated 27.1.2011 against one Moonis Elahi son of Pervez Elahi, on account of which he was arrested and was subjected to investigation along with other accused. It is pertinent to mention here that the interim challan was submitted in the said cases but in the meanwhile Malik Muhammad Iqbal, the then D.G. FIA, against whom matter for contempt of Court is pending and has been reserved for announcement of judgment, managed to ensure his disassociation from the cases. Detailed facts in this behalf have already been noted in the preceding paragraphs.

28. Facts noted hereinabove, *Prima facie*, support to infer that after registration of FIRs against Moonis Elahi and others, efforts were accelerated to disassociate Mr. Zafar Ahmed Qureshi from the investigation of the said cases. It is to be noted that during the investigation of the cases, Mr. Zafar Ahmed Qureshi approached to Serious Organized Crime Agency (SOCA), UK, through Mirza Sultan M. Saleem, the then Additional Director NCB/Interpol FIA Headquarters, and succeeded in obtaining information from SOCA about the bank account of Moonis Elahi with EFG Private Bank Ltd., having a balance of £ 1,138,792.53, in the name of a company owned by him and another account in Barclays Bank in the name of Beenish Khan (wife of Mohsin Habib Warraich) having a balance of £ 102,307.63 (transferred

from the account in EFG Private Bank Ltd.). This fact has been disclosed in the report submitted in the Court on 25.07.2011 in pursuance of earlier directions made by this Court. The report further indicates that the said amount has been allegedly transferred from NICL transactions. The said fact has also been admitted by the learned Attorney General for Pakistan during hearing of the case.

29. Above facts, *inter alia*, if proved in Court of law, can entail serious consequences. As such it was felt necessary for vested interest to block re-association of Zafar Ahmad Qureshi, with the cases in pursuance of order of this Court dated 1.7.2011, therefore, allegedly efforts continued at different levels. This fact had also received sufficient corroboration from the reports published in print media on 5.7.2011 and 6.7.2011, wherein it has been reported that the suspension of Mr. Zafar Ahmed Qureshi from service was a result of political intervention. Abstracts from some of the leading newspapers are given below for reference:-

05.07.2011

THE NEWS INTERNATIONAL

SC snubbed as Qureshi suspended for 'talking'

In what appears to be a direct rebuff to the Supreme Court, the government has once again thwarted the SC's efforts to force the investigation of the Rs.5 billion NICL scam through a particular officer, by suspending Additional Director General FIA, Zafar Qureshi, within 72 hours of his reinstatement, on the ruse of talking to media without departmental authorisation.

... Qureshi had been forcibly brought back to head the investigations when the supreme court, on July 1st, cancelled his earlier transfer orders and forced the executive to reassign the multi-billion rupee National Insurance Company Limited scam to him. The Supreme Court had also directed the DG FIA, on Friday to provide full assistance to Qureshi in investigations. ...

The case was of particular import to the ruling PPP for two reasons. Firstly, it involved Moonis Elahi, the scion of the Gujrat Chaudrys whose support is critical for the government to survive in parliament; and secondly, the Gillani led executive appears in no mood to accept the precedence of the judiciary directing the executive on how to run its house.

..... Another source however insisted that the decision to suspend Qureshi had actually been taken in a meeting between Prime Minister Yusuf Raza Gillani, Rehman Malik and Chaudry Pervez Elahi.

THE NEWS INTERNATIONAL

The four options Qureshi was given but rejected

One of the most powerful ministers summoned the FIA Additional Director General Zafar Qureshi on Sunday and gave him four options: leave the country immediately; go on a long leave; tell the Supreme Court in writing that he cannot continue with the NICL investigation for personal reasons; and, if all the three are not possible, then bail out Moonis Elahi, the son of the Chaudhry Pervez Elahi, the new coalition partner of the PPP government. The News has learnt.

Credible interior ministry sources told The News that the minister told Qureshi that because of his investigations, the government alliance was in danger and the government might fall as a result of the completion of his investigations. Hence, he (Qureshi) should not be a part of destabilising the government.

It was also learnt that the Chaudhrys of Gujrat have made it clear to the government that if Qureshi came back to Lahore and started his work on the NICL scam, the PML-Q will no more be a part of the PPP government. It is also worth mentioning that besides Moonis Elahi, Prime Minister Yousuf Raza Gilani's son is also involved in the NICL scam worth billions of rupees. According to experts, the finding of crucial evidence by Qureshi against the sons of the two top leaders was the major reason for the formation of the new alliance of PPP with the PML-Q.

THE EXPRESS TRIBUNE INTERNATIONAL

NICL lead officer: Reinstated by the court, ousted by the government

The rigmarole over the posting of an additional director general of the FIA, which has played out over the last few months between the executive and judiciary, has taken yet another twist.

Finally reinstated on Friday by the Supreme Court to the post of the Federal Investigation Agency (FIA)'s lead investigator of a multibillion rupee scam, Zafar Qureshi was sent packing once again on Monday – this time in the form of a suspension.

..... In the meeting with Malik on Sunday, sources The Express Tribune that Qureshi had allegedly given three options: Go on long leave, declare that Moonis Elahi was "not guilty" or face severe action.

It was said that Qureshi did not respond favourably. Qureshi had refuted charges of interacting with the media, explaining that copies of the order were sent to the secretary interior, DG FIA and the registrar of the Supreme Court, saying that this increased the chance of it being leaked to the media. He also explained that he had not done anything on his own and he was only complying with orders of the apex court. He said that he had neither called any press conference nor issued any press statement in this regard.

THE DAILY DAWN

NICL scam investigator suspended

The government on Monday suspended Zafar Hussain Qureshi, an Additional Director General of the Federal Investigation Agency who was investigating the National Insurance Company Limited (NICL) financial scam in which the elder son of federal minister Chaudhry Pervaiz Elahi is the main accused.

The Supreme Court had ordered bringing back Mr Qureshi to the NICL investigations – the assignment from which he was removed

in April this year, apparently to appease PML-Q leaders Chaudhry Shujaat Hussain and Chaudhry Pervaiz Elahi.

..... According to sources in the prime minister's secretariat, the decision to suspend Mr Qureshi was taken after a meeting earlier during the day between the prime minister and the Chaudhrys. Interior Minister Rehman Malik attended the meeting, too.

According to the sources, the government had assured PML-Q leaders that it would help secure the release of Mr Moonis Elahi once the party joined the ruling coalition.

THE DAILY NATION

Govt suspends Zafar Qureshi

In yet another ugly turn in NICL corruption scandal investigation, the federal government Monday night suspended a competent senior FIA officer, Zafar Ahmad Qureshi, on the pretext of his "speaking to media".

..... Significantly the suspension order for Zafar Ahmad Qureshi was issued after Senior Minister Prevaiz Elahi accompanied by Minister for Interior Rehman Malik called on Prime Minister Yousuf Raza Gilani. Prevaiz Elahi's son Moonis Elahi is involved in the scam and he has been under detention for the last few months.

With his restoration orders the apex court had also directed FIA DG to facilitate ADG Qureshi in NICL scam investigation. But instead of facilitating the ADG, the DG on the very same day transferred all investigation team members assisting the ADG in the NICL case to remote and difficult posts. An FIA officer said that he was suspended only to teach him a lesson.

THE DAILY TIMES

Additional FIA DG Zafar Qureshi suspended

National Police Foundation Managing Director and Federal Investigation Agency Additional DG Capt (r) Zafar Ahmad Qureshi has been suspended after his explanation for his comments on the media were termed unsatisfactory after examination by the concerned authority. The competent authority has placed Qureshi under suspension by exercising power under rule 9 of the Government Servants (Efficiency and Discipline) Rules 1973 with immediate effect. According to the suspension order issued on Monday by the deputy secretary of the Interior Ministry, after approval from the competent authority, the said officer submitted his explanation within stipulated time as given to him by the competent authority to explain the matter, which was found unsatisfactory. The Supreme Court had only a few days back ordered reinstatement of Qureshi, who was suspended earlier by the government.

06.07.2011

THE NEWS INTERNATIONAL

Qureshi had evidence of foreign accounts

Suspension of FIA's Zafar Qureshi has not only prevented the possible progress in NICL case but has also halted the suspended officer from pursuing an enquiry against his juniors for creating hurdles in his NICL probe, documents reveal.

Zafar Qureshi wanted to proceed against the former DG FIA Waseem Ahmed for not cooperating and providing information about the foreign currency accounts of Moonis Elahi, received by the FIA headquarter from Serious Organized Crime Agency (SOCA) UK, which delayed the process to reach its logical conclusion.

Sensing the gravity of the situation as Zafar Qureshi had started expanding his area of investigation former DG FIA Malik Iqbal stopped him from further pursuing the matter by expressing his displeasure to Zafar Qureshi and stating that "under the pretext of investigation, you have started inquiries about the conduct of FIA officers".

THE NEWS INTERNATIONAL

Interior Ministry says no options offered to Qureshi

The Interior Ministry has denied that Minister Rehman Malik gave four options to FIA officer Zafar Qureshi when they met in Islamabad, as reported by The News on Tuesday.

The spokesman termed the news item false and concocted and clarified that Minister for Interior had offered no such options to his subordinate Mr Zafar Qureshi. Mr. Qureshi met in the presence of secretary interior only on matters pertaining to National Police Foundation which was pre-arranged.

Ahmad Noorani Adds: Federal Interior Minister Rehman Malik in his clarification confirmed his meeting with Zafar Qureshi. The News story was based on credible information and was cross-checked from different interior ministry sources. It is astonishing why Rehman Malik discussed matters relating to National Police Foundation with Zafar Qureshi while he was working as ADG in FIA. The News will welcome any legal proceedings in this behalf and will present all kind of evidence in a court of law regarding Rehman Malik's meeting with Zafar Qureshi and his offer of the four options as were mentioned in The News story and are reproduced in the Interior ministry clarification. The News stands by its story.

30. From perusal of the above reports, it stands *prima facie* established that Mr. Zafar Ahmed Qureshi, after passing of order dated 1.7.2011 by this Court allegedly was given four options by the Federal Interior Minister, reference of which has been made in the news reports. In addition to it, the news items also indicate that the political personalities joined their heads together for the purpose of flouting the order of this Court. *Prima facie*, the order of suspension of Mr. Zafar Ahmad Qureshi, based on vague assertions of addressing to media and thereby committing misconduct, is tantamount to make the order of this Court dated 1.7.2011 suspending the order of his transfer, ineffective. In this behalf pictures of political persons having a meeting, have also been published. It is to be noted that the news published in the above noted newspapers have not been rebutted except in one of the news papers i.e. The News International, where

the Ministry of Interior has contradicted the stand taken by the newspaper but the newspaper stood by its story. Therefore, a question for determination has arisen. At the same time the facts narrated hereinabove lead us to believe that the suspension of Mr. Zafar Ahmad Qureshi is not based on reasonable and fair ground.

31. The situation became bad to worst when immediately after happening of the above said incidents, a campaign was launched against the judiciary by a specific group for the purpose of undermining the authority of the Court. Transcription of advertisement is as under:

"ایک شخص نے NICL کو اپنی زمین لاہور میں بیچی۔ ڈیل منسوخ ہوگئی۔ تمام پیسے واپس کر دیئے گئے۔ ڈیل کرنے والا ضمانت پر رہا۔ استغاثہ کے کواہوں نے عدالت میں بیان بھی دے دیا کہ مونس الہی کا کسی بھی ڈیل سے کوئی تعلق نہیں۔ تو پھر انصاف کہاں؟ کیا انصاف میں تاخیر کسی اور سازش کا پیش خیمہ تو نہیں؟ آخر مونس الہی کا جرم کیا ہے؟ ذرا آپ بھی سوچئے!
مونس الہی: ہماری عدالتوں پر مجھے پورا اعتماد ہے۔
منجانب: پاکستان مسلم لیگ لائبرز ونگ"

The Secretary Information was directed to personally look into the matter and take necessary steps to ensure that the dignity of the judiciary is not undermined. In the meanwhile he had not submitted report, therefore, office had put up a note as such he was directed to appear and submit report. Initially he made an attempt to offer explanation but he was told in clear words that he had to submit report fixing the responsibility upon the specific group which had launched campaign against judiciary on the electronic media. On 26.7.2011 Acting Secretary, Ministry of Information and Broadcasting submitted his report stating that he had telephonic conversation and had also wrote letters to the heads of the TV Channels and endorsed the copy of the same to the Chairman, Pakistan Broadcasters Association to assist M/o Information in that matter and to provide the requisite detail of the perpetrators of the advertisement in question. He also assured that the M/o Information and Broadcasting is ready to

sit with the private TV channels to work out a mechanism to prevent such unfortunate incidents in future.

32. The above facts indicate that allegedly political intervention has been made to make the judicial order dated 1.7.2011 passed by this Court ineffective. Under the circumstances learned Attorney General was asked during the hearing of the case to obtain reaction of the Interior Minister through Interior Secretary, reaction of Chief Executive through Principal Secretary as well as reaction of Secretary Establishment. Despite availing opportunities twice no progress was made in this behalf. Inasmuch as, on the last date of hearing i.e. 25.07.2011 another request was made for the adjournment of the case but not in so many words, therefore, *prima facie* presumption had been drawn that the material published by print media, reference of which has been made hereinbefore, establishes that the order dated 1.7.2011 has been made ineffective due to alleged political expediency, otherwise the functionaries could have denied these facts in black and white. We had observed about non filing of reaction by the functionaries noted above in the order dated 25.07.2011 as well.

33. It is to be noted that move to keep Mr. Zafar Ahmad Qureshi disassociated from the investigation of the cases succeeded as without legal and regular manner he was suspended, whereas, there are cases pending before this Court noted below wherein, in very serious issues no suspension order has been passed: -

? Maulvi Iqbal Haider v. Capital Development Authority (PLD 2006 SC 394),

? In the matter of: Human Rights Case No.4668 of 2006 (F-9 Park case) (PLD 2010 SC 759),

? In Ref: Suo Moto Case No.5 of 2010 (LNG case) (PLD 2010 SC 731).

34. It is a matter of fact that through judicial verdict Mr. Kamran Lashari, former Chairman CDA was required to be proceeded against departmentally in Maulvi Iqbal Haider's case as well as in F-9 Park's case but presently he is performing as Secretary in one of the departments of the present regime. Whereas in instant case despite passing of order a person was suspended within the shortest possible

time and apparently there was no object except to disassociate him from the investigation of the case as it has been observed hereinabove because the competent authority was not interested that he should continue with the investigation of the cases arising out of FIRs No.24, 29 & 46/2010 and 05/2011 etc.

35. It is important to note that the basis on which Mr. Zafar Ahmed Qureshi was suspended, does not seem to be sufficient to take extreme step against him because he had written letter on noticing that his members of the team had been transferred factually in resentment of order of this Court dated 01.07.2011, whereby the DG FIA was directed to cooperate with the investigation team but instead of considering his request in pursuance of observations of this Court in positive terms, these officers were transferred. Therefore, on 07.07.2011, D.G. FIA was called upon to withdraw/reverse their transfer orders but instead of obeying the said order, on 11.07.2011 he left for U.K., although the orders dated 01.07.2011 and 07.07.2011 had been served upon him and the latter order was also passed in presence of the Attorney General for Pakistan as well as Director Law Muhammad Azam Khan. Thus he proceeded to defy the directions of the Court, therefore, the Court had to intervene by issuing the directions to Mr. Manzoor Chaudhry, Acting D.G. FIA to comply with the order dated 7.7.2011 and place on record the required notification of the transfer of the aforesaid officials. In the meantime, for violation of the order of the Court dated 07.07.2011 matter was referred to the Secretary Establishment for initiating proceedings of misconduct against D.G. FIA for non-compliance of the order of the Court dated 07.07.2011. We were told that summary had been sent to the competent authority but no response had been received. Contrary to it, he was holding the post of DG FIA whereas on the other hand Mr. Zafar Ahmed Qureshi, who had obeyed the Court order and stood for the rule of law despite threats etc., advanced to him by the political figures noted hereinbefore and had shown his commitment to discharge his duties strictly in accordance with law, had been suspended for no other purpose except to make the order dated 1.7.2011 ineffective.

For achieving the object the functionaries had not only taken the stand on the basis of week plea but also accepted the political pressure as is evident from the facts noted hereinabove. It is equally important to note that in the order dated 14.07.2011 notice was issued to Tehsin Anwar Ali, D.G. FIA to explain as to why instead of burdening the exchequer the costs of the transfer of these officers to different places may not be recovered from him. This notice was also served upon him but he did not opt to appear or to file reply despite issuing repeated directions, during the hearing of the case, to appear before this Court through Ch. Manzoor Ahmed, Additional Director General, FIA as well as the Attorney General. In this behalf the Registrar of this Court was also directed to establish contact with him to attend the Court but despite efforts of the Court, he not only failed to appear before the Court but also left Islamabad, although initially impression was given that he was coming to attend the Court. Contents of the report received from the Registrar in this behalf are reproduced hereinbelow: -

"As per Court direction to direct DG, FIA to appear before Bench No.1, initially call was made on telephone No.9260093 at about 12:00 noon, the Operator (Mr. Nisar) responded that DG, FIA is on the way to reach the Supreme Court. After a while the same number was contacted again to inquire about the DG, FIA, this time the said Operator changed his statement by saying that DG, FIA has not come to the Office today, and in his knowledge he has gone to the Supreme Court in connection of some case.

Mr. Iqbal, PA/LDC was also contacted on the above-said phone number who responded that he has no information about the DG, FIA. He was asked to give the contact number of a responsible officer through whom DG, FIA can be contacted and he gave the number of Mr. Waseem Ahmed, Chief of Staff to the DG, FIA. He was contacted on his mobile number i.e. 0300-8433555 who stated that he is on leave at Lahore but according to his information DG, FIA has left for Karachi in the morning. When he was contacted again at about 12:30 pm, he responded that DG, FIA is in the flight for Karachi and will land there after half an hour, after which he will convey the Order to him.

*The DG, FIA was contacted several times on his cell number (03008456468) but was not responding.
Submitted.*

25.7.2011"

36. From the above noted facts, it is not difficult to deduce that different devices have been adopted to make the order of the Court dated 1.7.2011 ineffective with clear intention not to implement the same and even if the said order is implemented, he (Mr. Zafar Ahmad Qureshi) would be helpless to investigate the criminal cases as his team had been transferred to far flung areas of provinces of KPK and Balochistan. As has already been observed that ordinarily this Court does not intervene in the functioning of the Executive but it has been empowered, while exercising the powers of judicial review, to examine the administrative orders as well. Admittedly the competent authority has been vested with the discretion to pass administrative orders but such discretion has to be exercised in accordance with law. In the instant case there were certain allegations against Mr. Zafar Ahmad Qureshi and a show cause notice was issued, which was replied by him. On the basis of material, without considering the reply filed by him, the person who called for his explanation though not empowered for the same under Government Servants (Efficiency & Discipline) Rules, being in grade-21. Without prejudice to the proceeding, no such notice to call for his explanation within 24 hours was warranted under the E & D Rules. It has also been admitted by the learned Attorney General that it was not issued under Rule 6 of the E & D Rules, 1973 for misconduct rather the same was issued to get his response about the allegations. It is evident from the record that the order of suspension was issued by the person who was not competent as the verbal orders were obtained from the competent authority, later on confirmed by the Principal Secretary to the Prime Minister. Admittedly, no incriminating material was produced except a letter and even without considering the fact that whether reply was given or not.

37. It is well settled principle of law that where a procedure has been provided for doing a thing in a particular manner that thing should be done in that manner and in no other way or it should not be done at all; indeed it impliedly prohibits doing of thing in any other manner; the compliance for such thing in no way could be either ignored or dispensed with. Reference in this behalf may be made to the cases of E.A.Evans v. Muhammad Ashraf (PLD 1964 SC 536), Atta Muhammad Qureshi v. The Settlement Commissioner (PLD 1971 SC

61), Muhammad Yousaf Khan v. Muhammad Ayub (PLD 1972 Peshawar 151) and Dost Muhammad v. Government of Balochistan (PLD 1980 Quetta 1). Be that as it may, in absence of any material available on record the competent authority has exercised the discretion. There are certain norms for exercise of discretion. We are not challenging the discretionary powers of the executive but the same have to be exercised judicially and in reasonable manner as held in the case of Tariq Aziz-ud-Din: in re (2010 SCMR 1301). The authorities cannot be allowed to exercise discretion at their whims, sweet will or in an arbitrary manner; rather they are bound to act fairly, evenly and justly. Reference may be made to the cases of Abid Hussain v. PIAC [2005 PLC (CS) 1117], Abu Bakar Siddique v. Collector of Customs (2006 SCMR 705), Walayat Ali v. PIAC (1995 SCMR 650).

38. In the case of Sharp v. Wakefield [1891 AC 173] Lord Halsbury has observed that when it is said that something is to be done within the discretion of the authorities, it means that something is to be done according to the rules of reason and justice, not according to private opinion, according to law and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to discharge of his office ought to confine himself. The said case was relied upon by Indian Supreme Court in the case of Union of India v. Kuldeep Singh [2004(2) SCC 590].

In the cases of State of U.P. v. Mohammad Nooh (AIR 1958 SC 86), Pratap Singh v. State of Punjab (AIR 1964 SC 72) and Fashih Chaudhary v. D.G. Doordarshan [(1989) 1 SCC 189], it has been held that if the act complained of is without jurisdiction or is in excess of authority conferred by statute or there is abuse or misuse of power, a Court can interfere. In such an eventuality, mere fact that there is denial of allegation of mala fide or oblique motive or of its having taken into consideration improper or irrelevant matter does not preclude the court from enquiring into the truth of allegations leveled against the authority and granting appropriate relief to the aggrieved party. Reference in this behalf may be made to the case of M.L. Builders Pvt. Ltd. v. Radhey Shyam [(1999) 6 SCC 464] wherein it has

been held that the decision is unlawful if it is one to which no reasonable authority could have come. In the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress (AIR 1991 SC 101) the Court held that the discretion enjoyed by the persons holding high offices should not be left to the good sense of individuals and repelled the presumption that person holding high office does not commit wrong. Relevant paras therefrom are reproduced as under: -

"There is need to minimize the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law....."

25. The "high authority" theory so-called has already been adverted to earlier. Beyond the self-deluding and self-asserting righteous presumption, there is nothing to support it. This theory undoubtedly weighed with some authorities for some time in the past. But its unrealistic pretensions were soon noticed and it was buried without even so much as an ode to it. Even while Shah, J. in his dissenting opinion in Moti Ram Deka v. General Manager, N.E.P. Railways, Maligaon, Pandu, (1964) 5 SCR 683: (AIR 1964 SC 600) had given vent to it, Das Guptam H. in his concurring judgment but dealing with the same point of unguided provisions of Rule 148(3) of the Railways Establishment Code, had not supported that view and had struck down the rule as being violative of Article 14 of the Constitution. The majority did not deal with this point at all and struck down the Rule as being void on account of the discrimination it introduced between railway servants and other government servants."

In the cases of E.P.Royappa v. State of Tamil Nadu (AIR 1974 SC 555), R.D. Shetty v. International Airport Authority [(1979) 3 SCC 489], Maneka Gandhi v. Union of India [(1978) 1 SCC 248], Ajay Hasia v. Khalid Mujib [1981(1) SCC 722], Shri Sitaram Sugar Co. Ltd. v. Union of India [1990 (3) SCC 223] the Supreme Court ruled that every arbitrary action, whether in the nature of legislative or administrative or quasi-judicial exercise of power, is liable to attract

the prohibition of Article 14 of the Indian Constitution. In the case of State of NCT of Delhi and another v. Sanjeev alias Bittoo [(2005) 5 SCC 181] the court while holding that decision is irrational and Court may look into the material on record, uphold the right of judicial review, on the basis of illegality in decision making process coupled with irrationality and perversity. It was further held that if the administrative or judicial power has been exercised on non-consideration or non-application of mind to relevant factors, such exercise shall stand vitiated. Relevant portion from the judgment is reproduced as under: -

"If the power has been exercised on a non- consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated."

39. It is an unwritten rule of the law that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. [Smt. Shalini Soni v. Union of India {(1980) 4 SCC 544}]. By now, the parameters of the Court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled. Indisputably, if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same. [Commissioner of Income Tax v. Mahindra (AIR 1984 SC 1182)]. The exercise of constitutional powers by the High Court and the Supreme Court, under the relevant Articles, have been categorized as power of "judicial review". Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of Fundamental Rights

guaranteed by the Constitution. With the expanding horizon of Articles dealing with Fundamental Rights, every executive action of the Government or other public bodies, including Instrumentalities of the Government, or those which can be legally treated as "Authority", if arbitrary, unreasonable or contrary to law, is amenable to the writ jurisdiction of the Supreme Court or the High Courts and can be validly scrutinised on the touchstone of the Constitutional mandates. [*Common Cause, A Regd. Society v. Union of India* (AIR 1999 SC 2979)].

40. It is to be noted that the object of suspending an officer from duty during the pendency of an inquiry is that he should not be allowed to tamper with documentary and oral evidence likely to be produced in his case. This object, as has been observed above, can be achieved in a very short time and if the case is likely to take more time then the easiest way to avoid it is to transfer him to some other department, so that he may not be able to tamper with the evidence that may be produced against him. Undoubtedly under, the Service Rules there is ample power with the Government to suspend a Government servant both as a measure of penalty and during the pendency of the departmental enquiry. But all actions taken under these rules must be based on the principles of natural justice, otherwise there was no need to frame them. The power of suspension, therefore, must be exercised in a reasonable and fair manner. The moment the effect of the exercise of such power is found to be unfair and unjust, the Government servant, will be entitled to challenge it, and Courts of law if satisfied that such orders are based on arbitrary exercise of power will not hesitate to set them aside as they will be in clear violation and breach of statutory rules. [*Allauddin v. Chief Commissioner* (PLD 1959 Karachi 282)]. Under the circumstances when this Court is already seized with the matter regarding enforcement of fundamental rights in respect of corruption of huge amount belonging to the nation, it is obliged to exercise its jurisdiction under Article 184(3) read with Article 187 of the Constitution to examine the vires of the order of suspension. As it has been noted earlier, no reaction from the competent authority has been filed despite of various adjournments in the case i.e. 7.7.2011, 13.7.2011,

14.7.2011, 15.7.2011 and 18.7.2011, therefore, in the given facts and circumstances examination of the same in exercise of powers of judicial review is permissible.

41. The suspension of Mr. Zafar Ahmad Qureshi as has been taken place during the pendency of the matter before this Court followed by the order dated 1.7.2011, therefore, called for exercise of power of judicial review because an action which is not legal and regular and is arbitrary, vague and fanciful has to be declared to be *coram non judice* in the eye of law. Therefore, we are of the opinion that the suspension order of Mr. Zafar Ahmad Qureshi dated 4.7.2011 followed by another order passed later on, is not sustainable in eye of law and the discretion by the competent authority has been exercised contrary to the settled principles of law noted above.

42. In addition to above principle this Court is not debarred to exercise a jurisdiction for ensuring fair investigation of the cases with no other intention except to bring the accused to book who are involved in the cases of corruption which is menace against the nation/society and during the course of commission of offence if *prima facie* they have looted the money and have also succeeded in taking it outside the country. In India a matter was brought to the Supreme Court complaining that CBI and other agencies have failed to investigate into the offences because of the alleged involvement of important politicians, bureaucrats and criminals, who all were recipients of money from unlawful sources given for unlawful considerations. The Court in Jain Hawala case observed that, "*the continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer. In view of the persistence of that situation, it becomes necessary as the proceedings progressed to make some orders which would activate the CBI and the other agencies to at least commence a fruitful investigation. Merely issuance of a mandamus directing the agencies to perform their task would be futile and, therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that monitoring by the court could ensure continuance of the investigation. It was, therefore, decided to direct the CBI and other agencies to complete the*

investigation expeditiously, keeping the court informed from time to time of the progress of the investigation so that the court retained siesin of the matter till the investigation was completed and the charge sheets were filed in the competent court for being dealt with, thereafter, in accordance with law.” [Vineet Narain v. Union of India (AIR 1998 SC 889)].

43. In the case of Bank of Punjab v. Haris Steel Industries (PVT) Ltd. (PLD 2010 SC 1109), the matter related to one of the gravest financial scams in the banking history of Pakistan as a result of which the Bank stood cheated of an enormous amount of around eleven billion rupees which in fact belonged to around one million innocent depositors holding small accounts of money whose life savings and property had come under serious threat causing thus an obligation on Supreme Court to move to protect and defend the property rights of such a large section of population. Contention was raised that Supreme Court had no jurisdiction to control investigation of a criminal case and the reasons offered in support of the contention was that such a control over the investigation of criminal case by Supreme Court could be prejudicial to the accused. The Court held that the approach of a court of law while dealing with criminal matters had to be dynamic keeping in view the facts and circumstances of each case and also the surrounding situation prevailing in the country; it would have been felonious and unconscionable on the part of Supreme Court if it had refused to intervene to defend the fundamental rights of such a large section of the public and leaving it only to the concerned officials of the NAB who had done nothing at all in the matter for almost two years and who had remained only silent spectators of entire drama and had only witnessed the escape of the accuse persons to foreign lands; it was to check and cater for such kind of gross negligence nonfeasance and malfeasance that the framers of the Constitution had obligated the High Court under Article 199 and Supreme Court under Article 184(3) of the Constitution to intervene in the matter exercising their power to review the administrative and executive actions.

44. In view of the above facts and circumstances, we hold that:-

1. The order dated 4.7.2011 and or any other order, suspending Mr. Zafar Ahmad Qureshi, Additional D.G. FIA from service have been passed to render the judgment/order dated 1.7.2011 ineffective and non-operative. Thus, order dated 4.7.2011 suspending Mr. Zafar Ahmad Qureshi or any other order, is quashed/set aside. He shall be deemed to have been on duty as Additional D.G. FIA pursuant to the order of this Court dated 1.7.2011.
2. Mr. Zafar Ahmad Qureshi, Addl. D.G. is hereby directed to carry out investigation of the cases registered vide FIRs No.24, 29 & 46/2010 and 05/2011 etc., forthwith. He shall complete investigation of the cases expeditiously.
3. The D.G. FIA, Additional D.G. FIA, Mr. Zafar Ahmad Qureshi and other government authorities shall take steps to ensure that public money sent abroad noted hereinabove, shall be brought back. The D.G. FIA and others shall not create hindrance in the investigation being conducted by Mr. Zafar Ahmad Qureshi, Addl. D.G, under the direction of this Court.
4. In pursuance of order dated 13.7.2011 passed by this Court, no action shall be taken against Mr. Zafar Ahmad Qureshi without prior approval of this Court. The investigation team, which had already been assisting him, would join him as team mates, unless he wants otherwise.
5. On having made the order dated 1.7.2011 ineffective, *prima facie* interference has been made in the judicial functioning of this Court as a result whereof not only the authority of the Court has been eroded but at the same time the investigation of the NICL cases have been badly hampered, resultantly investigation has come to stand still, no progress has been made and looted money, which has

been taken outside the country is not likely to come back unless the investigation of the case is conducted seriously and the Government provides support to the prosecution instead of withdrawing its support.

6. Mr. Zafar Ahmad Qureshi, Addl. D.G. shall be submitting fortnightly report about the progress of the investigation duly countersigned by the D.G. FIA to Mr. Justice Amir Hani Muslim for perusal in Chambers.
7. *Prima facie* suspension order dated 4.7.2011 of Mr. Zafar Ahmad Qureshi is the result of political intervention in the affairs of this Court and it requires to be determined accordingly in view of facts and circumstances narrated above, which also includes pressurizing Mr. Zafar Ahmad Qureshi by the high-ups to dissociate him from the proceedings of the cases, as a follow up political expediency, which has been widely reported by the print media, referred to hereinabove, coupled with propaganda on electronic media against judiciary by issuing advertisements. The private T.V. Channels might have declined to indulge in such campaign but the T.V. channels being operated commercially *prima facie* can not be blamed, however, the persons or a specific group who have provided finances for this purpose are required to be dealt with in accordance with law.
8. As it has been held above that *prima facie* Mr. Zafar Ahmad Qureshi, Addl. D.G. was suspended due to political intervention followed by propaganda against judiciary on electronic media to undermine its authority, therefore, to ascertain these and ancillary questions Mr. Justice Ghulam Rabbani, Hon'ble Judge of this Court is appointed to conduct enquiry and submit report on the basis of evidence, which he will be empowered to collect to determine:

- (i) Whether before suspending Mr. Zafar Ahmad Qureshi, pressure was exerted upon him by the Interior Minister etc. as it has been reported in the newspapers due to political expediency, if so, to what consequences?
- (ii) Responsibility shall be fixed individually or collectively against the persons responsible for making investment to run the campaign against the judiciary on the electronic media as it has been noted hereinabove. On having determined the particulars of the persons responsible for launching the propaganda campaign against the judiciary what action against him and or them is called for, to maintain the dignity and honour of the Courts.

We would expect from him to complete the inquiry expeditiously in the interest of justice.

- 9. Mr. Sajid Mehmood Qazi, Addl. Registrar of this Court is deputed to facilitate Hon.ble Mr. Justice Ghulam Rabbani during inquiry. Similarly the Federal Secretaries including Secretary Interior, Secretary Establishment, and Secretary Information shall provide assistance, whatsoever is required by him to complete the report.

Adjourn to a date in office.

Chief Justice

Judge

Judge

Announced in open Court on 08.08.2011 at Islamabad

Mian Shakirullah Jan, J.

Approved For Reporting.