

In the Supreme Court of Pakistan
(Original Jurisdiction)

Present:

Mr. Justice Iftikahr Muhammad Chaudhry, CJ
Mr. Justice Javed Iqbal
Mr. Justice Raja Fayyaz Ahmed
Mr. Justice Anwar Zheer Jamali
Mr. Justice Ghulam Rabbni
Mr. Justice Khalil-ur-Rehman Ramday

SMC No.24 of 2010

(Regarding Corruption in Hajj Arrangements in 2010)

**Human Rights Cases No.57701-P, 57719-G, 57754-P, 58152-P,
59036-S, 59060-P, 54187-P & 58118-K of 2010**

(Applications by Abdul Rasheed & others)

On Court Notice:

For Member of Committee of Parliamentarians	: Nemo.
For former Minister S&T	: Mr. Afnan Karim Kundi, ASC with Senator Muhammad Azam Khan Sawati.
For former Minister Religious Affairs	: Sardar Khurram Latif Khan Khosa, ASC. Mr. Mehmood A. Sheikh, AOR.
For M/o Religious Affairs	: Mr. Shaukat Hayat Durrani, Secretary
For former Secretary Religious Affairs	: Mr. G.N. Gohar, AOR
For Establishment Division	: Mr. M. Ijaz Ghani, Dy. Secy. Mr. Muhammad Arshad, Dy. Secy.
For NAB	: Mr. Muhammad Akbar Tarar, Addl. PGA Mr. Fauzi Zafar, ADPGA.
For FIA	: Syed Jawed Ali Bukhari, Incharge Investigation. Mr. M. Azam Khan, Director (Law). Mr. Khizar Hayat, S.I Police with Rao Shakeel, former DG Hajj (in custody).
In C.M.A No.218/2011	: Mr. M. Ikram Chaudhry, ASc.
For Tour Operators	: Nemo.
Date of hearing	: 20.1.2011.

Order

Iftikhar Muhammad Chaudhry, CJ – Mr. Shaukat Hayat Durrani, Secretary, Religious Affairs has stated that complete arrangements have been made for disbursing the amount of SR 700 to each pilgrim and he has been ensured by the concerned Banks that task assigned to them shall be completed in a transparent manner and the aforesaid amount equal to Pakistani rupees, shall be ensured to be handed over to the pilgrims as early as can be possible. He has added that he himself is supervising the distribution of the money to them and has assured the Court that there shall be no complaint of mishandling etc. We appreciate the gesture shown by the Secretary as he has taken personal interest in obeying order the Court. However, he may procure a comprehensive report from the Banks, which shall be submitted after a period of one month to the Registrar for our perusal.

2. Learned Attorney General placed on record following notification dated 15.1.2011, issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division:-

“No.12/309/80-E-3 (Police)
Government of Pakistan
Cabinet Secretariat
Establishment Division

Islamabad, the 15th January, 2010

Notification

Syed Jawed Ali Shah Bukhari, a BS-21 officer of the Police Service of Paksitan, presently posted as Officer on Special Duty (OSD), Establishment Division is transferred and his services are placed at the disposal of Federal Investigation Agency (FIA), under Ministry of Interior, with immediate effect and until further orders.”

It is evident from the perusal of above notification that the services of Syed Jawed Ali Shah Bukhari (BS-21) have been placed at the

disposal of Federal Investigation Agency (FIA) under Ministry of Interior with immediate effect and until further orders. The above notification is followed by order dated 17.1.2011, issued by the Government of Pakistan, Ministry of Interior:-

"No.7/138/2010-FIA
Government of Pakistan
Ministry of Interior

Islamabad, the 17th January, 2011

To,
**The Director General,
FIA, Islamabad**

Pursuant to Establishment Division's notification

No.12/309/80-E-3 (Police), dated 15th January 2011, the services of Syed Jawed Ali Shah Bokhari, a BS-21 officer of the Police Service of Pakistan, have been placed at the disposal of FIA.

2. He is hereby appointed as Incharge Investigation of Suo Moto Case No.24 of 2010 (Hajj scam) being heard in the Honourable Supreme Court of Pakistan. In performance of his duties, the officer will report exclusively to the Supreme Court of Pakistan through Attorney General of Pakistan. He is authorized to select an officer of his choice from any agency/department to conduct and complete the investigation.

3. He is directed to start work immediately and report progress/seek further instructions from Supreme Court of Pakistan in the next hearing fixed on 20th January 2011."

Again, perusal of above order indicates that Syed Jawed Ali Shah Bukhari has been appointed as Incharge of investigation of Suo Moto Case No.24 of 2010 (Hajj Scam). It is to be noted that on account of unsatisfactory performance by the incumbent Director General (FIA), who has been appointed on contract basis, he was asked to exercise the option either to disassociate himself with the investigation of the case or the Court will pass an order in this regard. Meanwhile he himself submitted an application and requested the Government to allow him to disassociate himself whereafter the above orders have been issued, but the above-noted notification and the order, both are not in accord with section 3(2)

read with sections 4 & 5(2) of the Federal Investigation Agency Act 1974. For sake of convenience, these sections are reproduced herein below:-

“3(2) The Agency shall consist of a Director-General to be appointed by the Federal Government and such number of other officers as the Federal Government may, from time to time, appoint to be members of the Agency.

4. Superintendence and administration of the Agency.---(1) The superintendence of the Agency shall vest in the Federal Government.

(2) The administration of the Agency shall vest in the Director-General who shall exercise in respect of the Agency such of the powers of an Inspector General of Police under the Police Act, 1861 (V of 1861), as may be prescribed by rules.

5(2) Subject to rules, if any, a member of the Agency not below the rank of a Sub-Inspector may for the purposes of any inquiry or investigation under this Act, exercise any of the powers of an officer in charge of a police station in any area in which he is for the time being and, when so exercising such powers, shall be deemed to be an officer-in-charge of a police station discharging his functions as such within the limits of his station.”

3. Needless to observe that in view of the importance of the case, which is based not only on the complaints of general public, who had gone to perform Hajj, but also on the recommendations of the representative of the public/Parliamentarians, instant proceedings have been initiated. During the course of hearing, the then Minister for Religious Affairs has been removed alongwith another Minister, who had come forward and appeared before the Court to substantiate the allegations of corruption in the Ministry of Religious Affairs. Therefore, we were expecting that the Government of Pakistan would itself take all necessary steps to ensure transparent investigation in the case, to bring the accused persons to book, but we are constrained to observe that different devices are being adopted to hush up or

hamper the investigation of the case. In this behalf the notification referred to hereinabove clearly indicates that the Government has not realized so far the intention and object of conducting the investigation in a transparent manner, particularly so because on the basis of above notification and order no one, including the person appointed, would be in a position to legally exercise the jurisdiction in accord with the relevant provisions of law reproduced above, unless he is not made a member of the Agency (FIA). We feel no doubt in expressing that the above notification has either been issued intentionally or by a person who has no knowledge about the law, at all.

4. Syed Jawed Ali Shah Bukhari, who is present, has stated that he himself expressed reservations vis-à-vis the above-noted notification and order because without having been made a Member of the Agency it would not be possible for him to deliver. It is interesting to note that Syed Jawed Ali Shah Bukhari is a BS-21 Regular Officer of the Police. Previously he had been working as PPO/IGP, Balochistan and now he has only been made Incharge of the investigation and his performance will be supervised in terms of section 4 of the Act 1974 by a person, who after attaining the age of superannuation has been appointed on contract basis. It is indeed very strange that in the disciplinary forces, particularly, like police and FIA where people have to work in well defined discipline, the persons supervising the forces have been permitted and are holding the charge on contract basis. It may not be out of context to note that in terms of the definition of section 2 (1) (b) (ii) of the Civil Servants Act 1973, a person who is employed on contract does not even fall within the definition of a civil servant, so his

authority to command and maintain discipline can well be imagined from the fact that if a person himself is not a Civil Servant, he is considered only bound by the terms and conditions of his contract and not by the statutory law, because if any condition laid down in the contract is violative to statutory law, he would only be subject to action under the said contract.

5. We have asked the learned Attorney General that it is in the interest of the Government to promote the junior officers, who are waiting for promotion and rather they should be encouraged instead of employing persons on contract basis unless their services are indispensable, particularly, with regard to disciplined forces like Police, FIA etc.

6. This Court is fully conscious of its duty, which has to be discharged under the Constitution and when it is attempted to hush up the corruption cases, such as one under consideration, the Court can pass appropriate order as it has already directed, and it could also not be oblivious of its function to ensure that in the departments like the police and FIA, people, who deserve to be promoted on the basis of efficiency or performance etc. are appointed and not on contract basis. Therefore, we direct the Secretary, Establishment Division to furnish the list of all Police Officers, including the Director General, FIA who have been appointed on contract basis and also furnish the reasons for the necessity and the interest of the Government for allowing them to continue with such posts like IG and DG, which are of high importance and the persons occupying these posts are supposed to be responsible to ensure the rule of law in the country. The list shall

be furnished by the Secretary, Establishment Division by 21.1.2011. On receipt of such list, the office shall issue notices to all such officers to appear and explain as to under what authority they have been appointed on contract basis, and as to why notifications for their appointments should not be cancelled. Meanwhile, learned Attorney General shall take up the matter with the Government and point out that as the incumbent Director General, FIA has disassociated himself from the investigation, the person who has been appointed as Incharge of the Investigation shall be made a Member of the Agency and he shall continue with the investigation of the case in accordance with the law, without being influenced from any quarter or high up whosoever found involved in the matter.

7. Case is adjourned for 27.1.2011.

Chief Justice

Judge

Judge

Judge

Judge

Islamabad,
the 20th January, 2011.
Riaz

Judge