

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Writ Petition No. 3960 of 2018**

Sayed Zulfikar Abbas Bukhari

**Versus**

Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and others

Petitioner By : Mr. Sikandar Bashir Mohmand, Advocate

Respondents By : Raja Khalid Mehmood Khan, Deputy Attorney General.  
Mr. Imran Shafique, Special Prosecutor NAB.  
Ahmed Saeed Wazir, Deputy Director/I.O NAB.

Date of hearing : 04.12.2018

**AAMER FAROOQ, J. -** The petitioner is aggrieved of placing his name on Exit Control List (ECL) by respondent No. 1 on the recommendation of respondent No.2.

2. The facts, in brief, are that the petitioner is national of Pakistan and also holds citizenship of United Kingdom of Great Britain and Northern Ireland. On 18.09.2018, he was appointed as Special Assistant to the Prime Minister on Overseas Pakistanis & Human Resource Development. He is facing an inquiry initiated by respondent No.2 with respect to setting-up of off-shore companies in the British Virgin Islands named in the Panama Papers. In this regard, respondent No.2 issued various call up notices to the petitioner and required production of documents to probe into the matter. Admittedly, last time the petitioner was issued call up notice in August 2018. Vide Memorandum dated

04.08.2018, respondent No.1 placed name of the petitioner on Exit Control List under section 2 of the Exit from Pakistan (Control) Ordinance, 1981.

3. Learned counsel for the petitioner, *inter alia*, contended that the reason provided in the Memorandum for placing name of the petitioner on ECL is that he is not joining the inquiry proceedings before National Accountability Bureau (NAB) and that it is apprehended that he might abscond abroad permanently to avoid legal proceedings; that petitioner is regularly attending the inquiry as and when required by the Investigating Officer. It was further contended that documents required by the NAB were furnished. It was also contended that the petitioner is holder of Public Office and there is no chance of his absconsion if his name is removed from Exit Control List.

4. Learned counsel further contended that mere pendency of inquiry does not entitle the National Accountability Bureau to place name of any person on ECL. In support of his contentions, learned counsel for the petitioner placed reliance on cases reported as Mst. Nasreen Begum and another **versus** Ministry of Interior, Government of Pakistan through its Secretary and 2 others (PLD 2012 Islamabad 17), Inam Akbar **versus** Federation of Pakistan through Secretary, Ministry of Interior and others (PLD 2016 Lahore 553), Tanveer Hussain Manji and 3 others **versus** Federation of Pakistan through Secretary Interior and 3 others (2016 CLC 1534), Mian Ayaz Anwar **versus** Federation of Pakistan through Secretary Interior and 3 others (PLD 2010 Lahore 230), Wattan Party through President **versus** Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others (PLD 2006 SC 697), Pakistan Muslim League (N) **versus** Federation of Pakistan through Secretary Ministry of Interior and others (PLD 2007 SC 642), Wasatullah Jaffery **versus** Ministry of Interior through Secretary, Federal Government of Pakistan and 4 others (PLD 2014 Sindh 28), Messrs Mustafa Impex, Karachi and others **versus** The Government of Pakistan through Secretary Finance, Islamabad and others (PLD

**2016 SC 808)**, *Yusuf J. Ansari versus Government of Pakistan through Secretary Ministry of Interior, Islamabad and another (PLD 2016 Sindh 388)*, *Wajid Shamas-ul-Hassan versus Federation of Pakistan through Secretary, Ministry of Interior, Islamabad (PLD 1997 Lahore 617)*, *Dr. Joseph Wilson versus Federation of Pakistan through Secretary Ministry of Interior and others (2017 P Cr.LJ 1569)* and *Government of Pakistan and another versus Dada Amir Haider Khan (PLD 1987 SC 504)*.

5. Learned Special Prosecutor, National Accountability Bureau, *inter alia*, contended that it is apprehended that if the petitioner is allowed to leave the country, he might abscond. However, it was also contended that the Chairman, NAB has recommended removal of the name of petitioner as one time permission to proceed abroad vide letter dated 09.10.2018; that the petitioner is still to submit series of documents required of him. On specific query, I.O, present in Court, submitted that last time the petitioner was issued call up notice in August 2018 and since then no correspondence has been made, not even reminder for providing any document.

6. Learned Deputy Attorney General, *inter alia*, contended that letter dated 09.10.2018 has been received from respondent No.2 and the matter shall be placed before the Cabinet in due course. It was further contended that name of the petitioner was placed on ECL pursuant to the recommendation of NAB.

7. Arguments advanced by the learned counsels for the parties have been heard and documents placed on record examined with their able assistance.

8. The facts leading to the filing of the instant petition have been mentioned hereinabove, therefore, need not be produced.

9. Respondent No.1, on the recommendation of respondent No.2, placed name of the petitioner on Exit Control List. The Memorandum in question reads as follows:-

(Comp # 16948)

**Government of Pakistan  
Ministry of Interior**

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**No. 12/127/2018-ECL****Islamabad, the August 4, 2018**

**Memorandum**

**Subject:- Placement of Name of Exit Control List.**

It has been decided to place the name of Syed Zulfiqar Abbas Bukhari s/o Syed Wajid Hussain Bukhari (CNIC# 61101-9752485-7, Passport # 518157071. UK.), r/o House # 34, Street # 27, Sector F-10/1, Islamabad on Exit Control List under Section 2 of Exit from Pakistan (Control) Ordinance, 1981, on the recommendation of NAB that he is the owner of the Offshore companies mentioned in the PANAMA Paper, is not joining the inquiry proceedings in NAB and it is apprehended that he may abscond abroad permanently to avoid legal proceedings.

2. All concerned are requested to take immediate action in the matter.

**(Qalandar Khan)  
Section Officer (ECL)  
Tel: 9201535"**

Bare perusal of the Memorandum shows that National Accountability Bureau while conducting inquiry on the basis of Panama Paper apprehended that the petitioner might abscond and leave the country permanently as he is already not cooperating or attending the inquiry. Surprisingly, the Chairman, NAB has recommended removal of name of the petitioner as one time permission, vide letter dated 09.10.2018. The relevant letter reads as follows:-

"GOVERNMENT OF PAKISTAN  
**NATIONAL ACCOUNTABILITY BUREAU**  
SHAHRAH-E-JAMHURIAT, G-5/1,  
**ISLAMABAD**

No. 1(956)/2018/R/IM-I/NAB/Addl. Dir (ECL)  
9<sup>th</sup> October 2018

To: The Section Officer (ECL),  
Ministry of Interior,  
**Islamabad.**

**Subject:-** **Permission to Travel Abroad – Inquiry against Syed Zulfigar Abbas Bukhari s/o Syed Wajid Hussain Bukhari (CNIC No. 61101-9752485-7)**

Ref: MOI letter No. 12/127/2018-ECL, dated 14.09.2018.

With reference to letter cited above, the undersigned is directed to inform that competent authority has considered the request of above named individual and recommended one time permission to proceed abroad.

**(Rafi Ullah)**  
Addl. Director (ECL)”

By issuance of above letter, respondent No.2 has negated its stance for placing name of the petitioner on ECL inasmuch as if the petitioner have to abscond, he might do so pursuant to one time permission to leave the country. The Investigating Officer, present in Court, admitted that the petitioner did attend the inquiry proceedings as and when call up notices were issued and since August 2018, no call up notice has been issued or even a reminder as follow up requesting the petitioner to provide documents. The referred state of affairs clearly indicate that respondent No.2 does not genuinely believe in the reason advanced by it while recommending name of the petitioner to be placed on ECL.

10. Admittedly, when name of an individual is placed on ECL, his freedom of movement is curbed and the same tantamount to violation of fundamental rights and in such state of affairs, the power/authority is to be exercised by the executive sparingly after taking into account relevant facts and circumstances. The referred recommendation is not to be followed by respondent No.1 i.e. Federation of Pakistan, in a mechanical fashion. In case reported as *Government of Pakistan and another versus Dada Amir Haider Khan (PLD 1987 SC 504)*, the august Apex Court observed that discretion vested in a public authority must be exercised fairly, reasonably and in good faith. The case law relied upon by the learned counsel for the petitioner is instructive in the present facts and circumstances. In *Mst. Nasreen Begum and another versus*

Ministry of Interior, Government of Pakistan through its Secretary and 2 others (PLD 2012 Islamabad 17), this Court observed that mere pendency of inquiry would not justify denial of fundamental right of traveling abroad guaranteed to a citizen by the Constitution. Similar observation was made by the Hon'ble Lahore High Court in case reported as Inam Akbar versus Federation of Pakistan through Secretary, Ministry of Interior and others (PLD 2016 Lahore 553). In Mian Ayaz Anwar versus Federation of Pakistan through Secretary Interior and 3 others (PLD 2010 Lahore 230), the Hon'ble Lahore High Court clinched the law on subject and observed as follows:-

***"11. Let me first take up the question of alternate remedy of Review under section 3 of the Ordinance. Section 3 envisages filing of a representation for the review of order passed under section 2(1) of the Ordinance. An Order under section 2(1) of the Ordinance means a speaking order giving reasons. The Order Lust also sufficiently explain the element of "public interest" that would stand offended if the prohibitory order is not passed under the said subsection. Impugned Memorandum does not constitute an Order for the purposes of review, therefore, the remedy of review under the Ordinance is illusory and meaningless. A series of judgments have held that in the absence of reasons the statutory remedy of review cannot be invoked. Reliance is placed on Munawar Ali Sherazi v. Federation of Pakistan etc (PLD 1999 Lah. 459), Wajid Shamas-ul-Hassan v. Federation of Pakistan (PLD 1997 Lah. 617) and Sikandar Hayat Khan & 4 others v. Government of Pakistan (PLD 2003 Pesh. 102). Further, the present case involves the interpretation of fundamental rights of the petitioner and of section 2 of the Ordinance. Therefore, this writ is maintainable as the remedy of Review under section 3 of the Ordinance does not constitute an adequate remedy for the purposes of Article 199 of the Constitution in the present circumstances of the case.***

***26. The jurisprudence discussed above establishes that right to travel is part of human liberty as travel signifies freedom and liberty. Therefore, the right to travel outside the country is a fundamental right and an intrinsic part of right to liberty which is guaranteed under Article 9 of our Constitution.***

***27. Taking this further, there is little doubt in saying that the world today has shrunk due to online connectivity, internet, media and faster means of travel. People today travel across the globe to pursue higher education, to seek more challenging and rewarding employment, to carry***

*out academic research or to discover and expand their business into new markets of the world. Travel, therefore, has become an integral part of modern life. Right to education, right to livelihood and right to carry out lawful profession are incomplete without having access and the right to travel to any part of the world and in particular to the educational or business centres of the world. To me right to travel, especially international travel, besides being right to liberty is also an integral part of right to life or right to a meaningful, challenging, satisfying and purposeful life. Therefore, I hold right to international travel to be a right to life in addition to right to liberty. Right to life has already received a robust and a dynamic interpretation. I, with advantage, place reliance on Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry v. The President of Pakistan through the Secretary and others. (PLD 2010 SC 61)."*

The august Apex Court in Pakistan Muslim League (N) versus Federation of Pakistan through Secretary Ministry of Interior and others (PLD 2007 SC 642)

held that freedom of movement is fundamental right of every citizen, an undeniable right to go abroad and return back to Pakistan without any hindrance and restraint. It was also observed as follows:-

*"...but an action which is mala fide or colourable is not regarded as action in accordance with law. Similarly, action taken upon extraneous or irrelevant considerations is also not action in accordance with law. Therefore action taken upon no ground at all or without proper application of the mind of an authority would also not qualify as an action in accordance with law and would, therefore, have to be struck down as being taken in an unlawful manner.*

*There is no inherent power in the Executive, except what has been vested in it by law, and that law is the source of power and duty. The structure of the machinery of government, and the regulation of the powers and duties which belong to the different parts of this structure are defined by the law, which also prescribes, to some extent the mode in which these powers are to be exercised or those duties performed. From the all-pervading presence of law, as the sole source of governmental powers and duties, there follows 'the consequence that the Existence or non-Existence of a power or duty is a matter of law and not of fact, and so must be determined by reference to some enactment or reported case. Consequently there are no powers or duties inseparably annexed to the Executive Government. It cannot be argued that a vague, indefinite and wide power has been vested in the Executive to invade upon the proprietary rights of citizens and that such invasion cannot be subjected to judicial scrutiny if it is claimed that it is a mere*

*executive order. This is not the position in law. Any invasion upon the rights of citizens by anybody no matter whether by a private individual or by a public official or body, must be justified with reference to some law of the country. Therefore, executive action would necessarily have to be such that it could not possibly violate a Fundamental Right. The only power of the; Executive to take action would have to be derived from law and the law itself would not be able to confer upon the executive any power to deal with a citizen or other persons in Pakistan in contravention of a Fundamental Right. Functionaries of State, are to function strictly within the sphere allotted to them and in accordance with law. No Court or Authority is entitled to exercise power not vested in it and all citizens have an inalienable right to be treated in accordance with law."*

In case reported as Wasatullah Jaffery **versus** Ministry of Interior through Secretary, Federal Government of Pakistan and 4 others (PLD 2014 Sindh 28),

the Division Bench of Sindh High Court observed as follows:-

**"10. The facts of this case and the admitted position discussed above are sufficient to establish that the name of the petitioner was placed on the ECL by the Ministry of Interior in an arbitrary and purely mechanical manner only on the instructions of NAB, without applying its own mind, without passing any speaking order, and without disclosing the basis of its intention of exercising power under section 2(3) of the Exit from Pakistan (Control) Ordinance, 1981. Such action on the part of the Ministry of Interior, which was not done fairly, reasonably or in good faith, indeed violated not only the valuable fundamental rights of the petitioner guaranteed under Articles 4, 9 and 15 of the Constitution, but also prohibited him from performing Hajj, which is one of the five fundamental religious obligations in Islam. The actions on the part of the respondents in placing the name of the petitioner on the ECL, prohibiting him from travelling abroad, and offloading him from the Hajj flight, are, therefore, declared as arbitrary, void ab initio and without jurisdiction.**

**11. As noted above, respondent No.1/Ministry of Interior was put on notice a number of times by this Court to place on record the material that prompted it to place the name of the petitioner on the ECL in order to show that such decision was not taken in a mechanical manner, but was taken fairly, reasonably, in good faith and after proper application of mind. Respondent No.1 was also put on notice that in case such material and valid justification was not produced before the Court, cost of not less than Rs.100,000.00 will be imposed, which shall be recovered from the delinquent officer. For the reasons best known to it, respondent No.1 did not place any material before the Court despite specific directions in this**



*behalf. The loss caused to the petitioner, especially the mental shock and emotional setback, cannot be gauged in terms of money. However, in view of the facts and circumstances of this case, we are left with no other option, but to impose cost of Rs.100,000.00 on respondent No.1/Ministry of Interior, Government of Pakistan. The said amount shall be recovered from the delinquent officer(s) out of his / their personal account and not from the National exchequer, and shall be paid to the petitioner as compensatory cost within thirty (30) days. This is without prejudice to the right of the petitioner to claim damages against the respondents, but subject to law."*

Similar view was taken in case reported as Yusuf J. Ansari **versus** Government of Pakistan through Secretary Ministry of Interior, Islamabad and another (PLD 2016 Sindh 388) as well as Wajid Shamas-ul-Hassan **versus** Federation of Pakistan through Secretary, Ministry of Interior, Islamabad (PLD 1997 Lahore 617). This Court in a recent judgment reported as Dr. Joseph Wilson **versus** Federation of Pakistan through Secretary Ministry of Interior and others (2017 P Cr.LJ 1569), revisited the entire case law and observed as follows:-

*"23. As a consequence of the enlargement of the concept of 'freedom' by judicial pronouncements, respondent No.1 is required to examine the recommendations of N.A.B. to place the name of a person on E.C.L. with a greater caution and care instead of mechanically following such recommendations and depriving a person of his freedom to travel abroad. Default in such objectivity is likely to result in infringement of the fundamental protection and liberty guaranteed to a person under the law and the Constitution. Respondent No.1 while deciding whether or not to place a person's name on the E.C.L. on the recommendations of NAB or any other agency, has a duty to strike a balance between restriction on the freedom available to a person to travel abroad and the nature and grievousness of the wrongdoing or crime committed by him. The principle of reasonableness has to be borne in mind by respondent No.1 while exercising discretion to restrict the fundamental protection of the right to travel abroad available to a citizen by placing his name on E.C.L. in exercise of power conferred by section 2 of the Exit from Pakistan (Control) Ordinance, 1981, which is reproduced herein below:-*

*"2. Power to prohibit exit from Pakistan.---(1) The Federal Government may, by order, prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents.*

***(2) Before making an order under subsection (1), the Federal Government shall not be necessary to afford an opportunity of showing cause to the person against the order.***

***(3) If, while making an order under subsection (1) it appears to the Federal Government that it will not be in the public interest to specify the ground on which the order is proposed to be made, it shall not be necessary for the Federal Government to specify such grounds."***

***25. The said order hardly shows any application of mind by respondent No.1 regarding the allegations leveled by NAB against the petitioner. Respondent No.1 appears to have carried out a mechanical exercise of placing the petitioner's name on the E.C.L. simply because NAB asked it to do so. Respondent No.1 has not placed before us any material that would show that it examined and applied its independent mind to the material (if at all any) placed before it by NAB before it made an informed decision to act on NAB's recommendation to place the petitioner's name on E.C.L.***

***26. Admittedly, the petitioner's name was placed on the E.C.L. without issuing him a show cause notice and without seeking any clarification or explanation from him. Respondent No.1 could not abridge the petitioner's fundamental rights of travelling abroad without due process. Section 2(2) of the Exit from Pakistan (Control) Ordinance, 1981, in effect, provides that before making an order for the placement of a person's name on E.C.L., it shall not be necessary for the Federal Government to afford an opportunity of showing cause to the person whose name is to be placed on E.C.L. This provision cannot be construed as an open license to respondent No.1 to place any citizen's name on E.C.L. without affording an opportunity of hearing to the person in question. An opportunity of hearing is an essential postulate of due process recognized in Articles 2-A, 4 and 10-A of the Constitution. It has consistently been held that fair opportunity of hearing and due process were fundamental rights of all citizens. The learned Assistant Attorney-General has not placed before us material that shows why respondent No.1 deemed it 'necessary' not to afford an opportunity of hearing to the petitioner before placing his name on E.C.L. In the absence of such material, respondent No.1 could not be absolved from its constitutional obligation of affording an opportunity of hearing to the petitioner whose fundamental right to travel was curtailed.***

***27. Respondent No.1 ought not to act mechanically in acting upon the recommendations of the NAB. It is supposed to record reasons for acting on NAB's recommendations of placing the names of citizens of Pakistan on the E.C.L. The recording of reasons has been held to be an essential prerequisite for exercising power conferred under section 2 of the Exit from Pakistan (Control) Ordinance, 1981. Section 2(3) of the Exit from Pakistan (Control) Ordinance, 1981, provides that it shall not be***

*necessary for the Federal Government to specify the grounds on which an order is made to prohibit any person from proceeding abroad, if it will not be in the public interest to specify such grounds. However, the Federal Government must record reasons for not specifying such grounds. Absence of such reasons would be a stark violation of section 24-A of the General Clauses Act, 1897. In the case of United Bank Limited v. Federation of Pakistan (2014 SCMR 856), the Hon'ble Supreme Court upheld the order passed by the Hon'ble Lahore High Court whereby respondent's name was ordered to be removed from the E.C.L. At paragraph 8 of the said report it was inter alia held as follows:-*

*"8. On perusal of the memorandum, we have reached the conclusion that the order has been passed in a mechanical manner by the Ministry of Interior without applying its mind and without giving any reason for such decision. This is a bald order and is hit by section 24-A of the General Clauses Act, 1897 and cannot be sustained."*

**28.** *In the case of Mian Ayaz Anwar v. Federation of Pakistan through Secretary Interior (PLD 2010 Lahore 230), it has been held as follows:-*

*"An order under section 2(1) of the Ordinance means a speaking order giving reasons. The order must also sufficiently explain the element of "public interest" that would stand offended if the prohibitory order is not passed under the said subsection."*

**29.** *There appears to be consensus of judicial opinion on the point that the mere fact that an inquiry or an investigation was being conducted by NAB or any other agency against the petitioner was not by itself a sufficient reason to place his name on E.C.L. Even the pendency of criminal proceedings, including proceedings before an Accountability Court (without an order or a request from the Court for the curtailment of an accused's freedom to travel abroad) is not considered a sufficient ground to place a citizen's name on E.C.L. While this has been the general trend of judicial pronouncements, yet each case has to be examined on its own merits, and the peculiar facts of a case may cause a Court of Constitutional causes to decline relief to a petitioner seeking to have his name removed from the E.C.L. At this stage, reference to the following case law on the subject would be apposite:-*

**(i)** *In the case of Shaikh Muhammad Mansoor v. Government of Pakistan through Secretary, Ministry of Interior (2008 MLD 955), the petitioner had entered into a plea bargain with N.A.B., but his name was not removed by the E.C.L. The respondents plea was that there were two other enquiries pending against him before NAB. It was held by the Hon'ble Lahore High Court that this was not a cogent reason to bypass or ignore the Constitutional provisions enshrined in Articles 4, 9 and 15 of the Constitution. Order passed by the respondents, declining to remove the petitioner's name from E.C.L. was declared without lawful authority.*

*(ii) In the case of Sohail Latif v. Federation of Pakistan through the Secretary, Ministry of Interior (PLD 2008 Lahore 341), the petitioner's name had been placed on the E.C.L. by the Ministry of Interior at the behest of NAB on the ground that investigation/prosecution against the petitioner was in progress. It was held that no material had been placed before the authorities before the petitioner's right of free movement was curtailed by placing his name on E.C.L. The Hon'ble Lahore High Court declared the respondent's action of placing the petitioner's name on E.C.L. to have been taken without lawful authority and of no legal effect. The right of a citizen to travel abroad was held to be a fundamental right guaranteed by Articles 2-A, 4, 9 and 15 of the Constitution.*

*(iii) In the case of Munir Ahmad Bhatti v. Government of Pakistan, Ministry of Interior (PLD 2010 Lahore 697), it was held that the involvement of a person in civil or criminal litigation was not ground to place his name on the E.C.L., unless the court where the matter was subjudice passed a specific order in that regard.*

*(iv) In the case of Masood Ahmed v. Federation Pakistan through Secretary, Ministry of Interior (2010 YLR 28), it has inter alia been held that mere investigation by NAB, which had been going on for a long time, would not be a ground for depriving the petitioner of his constitutional right of living as a free citizen of Pakistan and travelling abroad.*

*(v) In the cases of Mian Munawar. Ahmed v. Federation of Pakistan (2008 YLR 1508) and Zurash Industries (Pvt.) Ltd. v. Federation of Pakistan through Secretary, Ministry of Interior (PLD 2011 Karachi 385), the Hon'ble High Court of Sindh has held that mere pendency of civil or criminal cases against a citizen is no ground to deny him fundamental right of freedom to travel within or outside Pakistan.*

*(vi) In the case of Mst. Nasreen Begum v. Ministry of Interior (PLD 2012 Islamabad 17), although no criminal case was registered against the petitioner, his name was placed on the E.C.L. due to a pending inquiry. It was held that "there is a consistent view of the Courts that mere pendency of inquiry, does not justify the denial of fundamental right of travelling guaranteed by the Constitution of a citizen."*

*(vii) In the case of General (R) Pervez Musharraf v. Pakistan, through Secretary Interior (PLD 2014 Sindh 389), it was held as follows:-*

*"29. it is quite clear that registration of a criminal case or institution of criminal proceedings does not automatically imply that the accused should be disallowed to move outside Pakistan and or to put his name on E.C.L. Had it been the intention of legislature then it would have made the corresponding provisions in the Cr.P.C. or any other special enactments made for the trial of offences. Mere registration of FIR does not permit nor warrant the automatic inclusion of any such accused person on E.C.L. but once bail is granted, it is the province of that court to regulate the custody of that particular accused."*

**35. As regards the contention of the learned Assistant Attorney General that the writ petition instituted by the petitioner was not maintainable as he had the alternative remedy of filing a review petition or a representation in terms of section 3 of the Exit from Pakistan (Control) Ordinance, 1981, it is not denied that the petitioner had filed representations before respondent No.1 on 14.03.2017, and 16.03.2017 seeking the removal of his name from E.C.L. Respondent No.1 did not respond to the said representations. Section 3(2) of the Exit from**

***Pakistan (Control) Ordinance, 1981, obligates respondent No.1 to afford an opportunity of hearing to the person filing a representation seeking review of the order placing his name on E.C.L. The said representations dated 14.03.2017, and 16.03.2017 are on the record and the learned Assistant Attorney-General did not deny their receipt. At no material stage has respondent No.1 afforded an opportunity of hearing regarding the said representations. Therefore, the remedy of filing a review petition or a representation in terms of section 3(2) ibid can hardly be termed as efficacious, expeditious or adequate, so as to oust the jurisdiction of this Court in this matter. Since the learned Assistant Attorney-General has vociferously defended respondent No.1's decision to place the petitioner's name on E.C.L., it would not be just and reasonable to throw the petitioner at the mercy of respondent No.1. In the case of Dr. Akhtar Hassan Khan v. Federation of Pakistan (2012 SCMR 455), the Hon'ble Supreme Court quoted with approval judgment in the case of Watan Party through President v. Federation of Pakistan (PLD 2006 SC 697), wherein it has inter alia been held as follows:-***

***"26. It is important to note that as far as the principle of law discussed in the cases of Anjuman-e-Ahmadiya, Sargodha and Lahore Improvement Trust ibid is concerned, there is no cavil with the same and we with utmost respect approve the same. But at the same time, we have also to keep in mind another very important principle of law enunciated by this Court in the case of Syed Ali Abbas v. Vishan Singh (PLD 1967 SC 294) i.e. petitioner cannot be refused relief and penalized for not throwing himself again (by way of revision or review) on mercy of authorities who are responsible for such excesses. This principle has to be read along with the principle laid down in the case of Anjuman-e-Ahmadiya, Sargodha ibid wherein it has been held that if an adequate remedy provided by law is less convenient, beneficial and effective in case of a legal right to performance of a legal duty, the jurisdiction of the High Court can be invoked. Similarly this principle has been reiterated in The Murree Brewery's case ibid wherein it has been held that if a statutory functionary acts mala fide or in a partial, unjust and oppressive manner the High Court in exercise of its writ jurisdiction has power to grant relief to the aggrieved party.***

***27. Thus we are of the opinion that under the circumstances of the case, it would not be in the interest of justice to push the petitioners back to the authority who had already exercised the jurisdiction and is insisting that the action so taken by it is not only in accordance with law as it suffers from no legal discrepancy or infirmity but is also transparent. Therefore under the circumstances, referring the case of the petitioner to the Federal Government or this Court directing investigation under section 27 of the Ordinance would be inappropriate and an exercise in futility and it would also not serve the interests of justice."***

The upshot of the above case law is that respondent No.1 while placing name of the petitioner on Exit Control List did not apply mind and acted mechanically on the recommendation of National Accountability Bureau. Even respondent No.2

does not seem to be earnest in the recommendation it made inasmuch as it has granted one time unconditional permission to the petitioner to travel abroad, whereas in the original recommendation, it is provided that it is apprehended that he might abscond. Even otherwise, there is nothing on record to show that the petitioner has not cooperated with respondent No.2. Moreover, as noted above, Respondent No.1 while issuing the impugned memorandum acted without application of mind.

11. In view of the above position law and facts, the instant petition is **allowed** and Memorandum dated 04.08.2018, issued by respondent No.1, is **set-aside**. Respondent No.1 is directed to remove name of the petitioner from Exit Control List. It is clarified that any observation, made hereinabove, has no bearing on the ongoing inquiry/investigation against the petitioner being conducted by NAB.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

Announced in open Court this\_\_\_\_\_ day of December, 2018.

Approve For Reporting.

**JUDGE**

**JUDGE**

M.Shah/.

Uploaded By: Zulqarnain Shah