

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

W.P No.597/2019.

Syed Azhar Abbas Jaffari **Vs.** **The State etc.**

Petitioner by: Sardar Muhammad Ashfaq Abbasi,
Advocate.

Respondent No.1 by: Raja Muhammad Aftab Ahmed, AAG.

Respondent No.2 by: Syed Ghazanfar Ali Gillani, Advocate.

W.P No.853/2019.

Syed Azhar Abbas Jaffari **Vs.** **Special Judge**
Central, Islamabad etc.

Petitioner by: Sardar Muhammad Ashfaq Abbasi,
Advocate.

Respondent No.2 & 3 by: Qaiser Masood, Additional Director (Law)
FIA & Naeem Khan Niazi, Inspector
FIA/CCC.

Respondent No.4 by: Syed Ghazanfar Ali Ghallani, Advocate.

Respondent No.5 by: Raja Muhammad Aftab, AAG.

Date of Decision: 31.05.2019.

MOHSIN AKHTAR KAYANI, J:- Through this single judgment, I intend to decide above titled two writ petitions involving similar subject matter.

2. In writ petition No.597/2019, the petitioner has prayed for quashing of FIR No.04, dated 24.04.2018, U/S 420, 468, 471, 109, 34, PPC & 5(2)47, PCA, P.S FIA/CCC, Islamabad, wherein the petitioner has been nominated as accused with the allegations that he secured his appointment as MD/CEO in HBFC in violation of law on the basis of materially false documents and declaration, whereas he was Singapore National.

3. In writ petition No.853/2019, the petitioner has assailed the order of FIA Authorities/respondents No.2 & 3, whereby his name has been placed in stop list and he is not allowed to visit abroad.

4. Brief facts referred in the writ petitions are that the petitioner a Singapore National was appointed as MD/CEO of HBFC on 05.01.2009, however, HBFC was subsequently converted into limited company and named as HBFCL and HBFCL Workmen Union of Pakistan through its President challenged the appointment of the petitioner in writ petition No.2488/2012 and the said writ petition was allowed vide judgment dated 16.10.2012 and the appointment of the petitioner was set aside and direction was issued to recover the benefits received by the petitioner. The said judgment was assailed by the petitioner in ICA No.594/2012 before Division Bench of this Court, which was allowed to the extent of direction for recovery of benefits derived by the petitioner during his service as CEO of HBFCL vide judgment dated 31.01.2017. Respondent No.2, President of the Union lodged complaint to the FIA Authorities, where-after the FIA Authorities in consequence of the inquiry registered FIR No. 04, dated 24.04.2018, U/S 420, 468, 471, 109, 34, PPC & 5(2)47, PCA, P.S FIA/CCC, Islamabad. The petitioner has also been restrained from moving abroad as his name has been placed on stop list by DG, Immigration, FIA on the ground that case is pending against the petitioner, in which he is accused.

5. Learned counsel for the petitioner contends that the petitioner was appointed as MD/CEO of HBFCL on 05.01.2009 and at the time of his appointment he submitted his citizenship of Singapore and he is having Pakistan Origin Card in his possession and he has been selected after due process and procedure in accordance with law and he was appointed after approval of the then Prime Minister on the recommendations of concerned officials of State Bank of Pakistan and Ministry of Finance; that the petitioner has not concealed his Singapore citizenship and passport as well as CNIC details, which were claimed in application form at the time of appointment as such no offence is made out from the bare perusal of the record; that no offence is constituted in case a foreign national is appointed being head of company registered as HBFCL and as such his co-accused, who have processed case of the petitioner can only be dealt under departmental action for their negligence, which is otherwise not a criminal offence; that while placing the

petitioner as an accused in the said FIR, his name has also been placed on stop list prepared by FIA Authorities and he cannot be allowed to travel abroad on the ground that criminal case has been registered, whereas Exit from Pakistan (Control) Ordinance, 1981 does not acknowledge the concept of stop list as such the proposed actions of the respondents are illegal and liable to be quashed.

6. Conversely, learned counsel for respondent No.2/complainant contends that the petitioner has committed fraud with Government of Pakistan as such his very appointment has been challenged by HBFC Workmen Union of Pakistan through writ petition No.2488/2012 and the said writ petition was allowed vide judgment dated 16.10.2012 and the appointment of the petitioner was set aside and direction was issued to recover the benefits received by the petitioner. The said judgment was assailed by the petitioner in ICA No.594/2012 before Division Bench of this Court, which was allowed to the extent of direction for recovery of benefits derived by the petitioner during the appointment he served as CEO of HBFCL vide judgment dated 31.01.2017; that the petitioner in connivance with other officials concealed his citizenship and his entire action is in violation of dictum laid down by Hon'ble Supreme Court of Pakistan in the judgment reported as *PLD 2019 SC 133 (Muhammad Ibrahim Sheikh vs. Government of Pakistan)*.

7. Learned State Counsel contends that challan has been prepared U/S 173, Cr.P.C and submitted in the Court and all the accused are on bail including the petitioner and due to the pendency of the said case, name of the petitioner has been placed on stop list; that DG, FIA issued SOPs to black list an individual or place the name of individual on stop list, if case falls within purview of SOPs.

8. I have heard the arguments and perused the record.

9. Perusal of the record reveals that the petitioner has been nominated as accused in case FIR No. 04, dated 24.04.2018, U/S 420, 468, 471, 109, 34, PPC & 5(2)47, PCA, P.S FIA/CCC, Islamabad with the allegations that he secured appointment as of MD/CEO of HBFCL on 05.01.2009 by mis-declaration and by concealing his Singapore citizenship and being foreigner he could not be appointed

on the said position and due to his false statement the public ex-chequer has been burdened with costs of Rs.75 million.

10. I have gone through the record submitted by FIA Authorities before this Court with able assistance of AAG and Additional Director (Law) FIA. The final report submitted by FIA reveals that the entire matter has arisen out of writ petition No.2488/2012 titled *HBFC Workmen Union of Pakistan Collective Bargaining Agent, through its President, Islamabad vs. Federation of Pakistan, through Secretary Finance Division and others*, whereby the appointment of the petitioner was challenged. The said writ petition was allowed by this Court vide judgment dated 16.10.2012 and the appointment of the petitioner was set aside with further direction that the benefits derived by the petitioner while holding the said post shall be recovered from him in prescribed manner. The petitioner being aggrieved of said judgment, assailed the same in ICA No.594/2012 titled *Syed Azhar Abbas Jafri vs. HBFC Workmen Union of Pakistan and others*, which was decided by Division Bench of this Court on 31.01.2017 and portion of recovery of the benefits derived by the petitioner during the period he served as CEO has been set aside.

11. After judicial proceedings, respondent No.2/complainant filed compliant to the FIA Authorities, whereupon the inquiry was initiated and criminal case has been registered against the petitioner and three officials namely Mazhar, Yasmeen and Muhammad Javed. The final report submitted by FIA Authorities reveals that the petitioner remained MD/CEO of HBFC w.e.f. 05.01.2012 till passing of the judgment in writ petition No.2488/2012 and respondent No.2/complainant filed complaint in the year 2018, upon which FIR has been lodged.

12. I have gone through the record and has also confronted the I.O as well as Additional Director (Law) FIA, who has candidly conceded that in the application form submitted by the petitioner before the Authorities prior to his appointment he has specifically referred his nationality as of Singapore, even he submitted his foreign passport in the relevant column and not concealed any fact in his application. The above referred admission of the FIA officials if placed in juxta

position with final report, in which he concluded report against the petitioner and other accused as follow:-

"The accused Mazhar-ul-Hassan Shah, Deputy Financial Advisor, Ministry of Finance Islamabad was the dealing Section Officer in MoF and was the first official who received the documents/papers from the principal accused and processed the same for his appointment as MD/CEO of the then HBFC. It was his duty to see whether the documents/papers submitted by the principal accused were not in conflict with the statutory conditions for the appointment mentioned at section 12(c) of section 11 of the Bank Nationalization Act at that time. He should have forwarded the case of the principal accused SBP for FPT clearance after carrying out the basic statutory checks instead of facilitating the former. The principal accused had declared himself to be a Singaporean national as well as holder of Singaporean Passport No.S2592876H and CNIC No.42301-6474193-1 simultaneously which should have awakened this co-accused to the reality that the principal accused could either be a Singaporean national or Pakistani national, not the two simultaneously. Therefore, in light of documentary evidence in hand, this co-accused was duty bound to check the Pakistani nationality status of the principal accused from NADRA. But instead of doing that, he forwarded the case to SBP for FPT clearance. Not only that, he prepared a summary seeking approval of the Prime Minister for appointment of the principal accused to the post of MD/CEO of the then HBFC, without checking the nationality status of the principal accused. Since the principal accused, being a non-Pakistan national, was not eligible to be even considered for the post under reference, no summary was due to be sent to the Prime Minister at all. Clearly, the summary submitted to the Prime Minister was misleading inasmuch as the most vital piece of information had been suppressed. Thus, accused Mazhar-ul-Hassan Shah played key role in obtaining the unlawful decision of the appointment of the principal accused by way of concealing vital piece of information from the Prime Minister. The accused Yasmen Yousuf, Deputy Director, State Bank of Pakistan while working as Assistant Director, Banking Policy & Regulations Department, State Bank of Pakistan was the first officer in SBP who initiated processing for FPT in light of the documents/papers that she received from MoF. At para 72/C of the note sheet side of the attached file, this co-accused had herself clearly stated that the principal accused held Singaporean and Pakistani nationalities simultaneously. The documentary evidence made available to her by the principal accused through MoF reflects his nationality as Singaporean only with Pakistani ID Card. This fact should have prompted her to check from the concerned Government departments as to whether the principal accused was a Pakistani national at all – because a Singaporean national cannot be a Pakistani national at the same time due to non-existence of a dual nationality agreement between the two countries. However, she ignored this fact and laid the foundation for issuance of dangerously incomplete FPT clearance report which was approved by the whole SBP hierarchy and which ultimately led to the unlawful appointment of the principal accused to the post of MD/CEO of the then HBFC. The accused Muhammad Akhtar Javed, Head of Banking Policy & Regulations Department, State Bank of Pakistan being the second tier from the bottom in the

SBP hierarchy for the purpose of this case, agreed to the defective processing and recommendation of his immediate subordinate. A government functionary of reasonable prudence and the status of the co-accused is expected to be aware of this basic information and if he is required to submit a clearance report for appointment of a Singapore national (or any other national, for that matter) to an important assignment in the public sector, the first thing that he should ensure, in the ordinary course of business, is to verify the nationality status of the candidate(s) before moving on to verifying anything else. The accused persons being responsible for illegal appointment in violation of the provisions of Banks Nationalization Act, 1974 are found guilty of commission of offences of fraud, forgery and criminal misconduct therefore, are being challaned accordingly. While investigation against other accused persons is still underway.

In view of above facts and evidence came on record, it is evident that accused persons mentioned in Column-4 have committed offences under section 34/109/420/468/471 PPC r/w 5(2)47 PCA. Interim challan to the extent of said accused persons is being submitted U/S 173 Cr.PC with prayer that trial of the accused may please be initiated."

13. I have gone through the entire final report word by word with assistance of learned counsel for the parties, which clearly spells out that the petitioner being Singapore national applied for the post of MD/CEO, HBFCL in the year 2009 and he disclosed the entire information of citizenship, foreign passport and his previous CNIC number being of Pakistan Origin and nothing was concealed by him but the fact of his citizenship was not taken into account by his co-accused Mazhar-ul-Hassan Shah, who processed his application and the Deputy Director State Bank of Pakistan Yasmeen Yousaf, who was working in the Bank in Policy and Regulation Department being first officer, who initiated the FPT and it has been expected from those officials (co-accused), who were sitting at the helm of affairs of government of Pakistan that while processing the job application of the petitioner they were bound to notify/inform to the authorities that the petitioner is foreign citizen and he cannot be appointed as CEO due to his inherent disqualification in terms of Citizenship Act, 1952.

14. While considering the above facts as gospel truth, the entire scenario reveals negligence on part of the officials, who process the application regarding appointment of the petitioner as MD/CEO, HBFCL and such negligence can be taken on departmental side.

15. I have asked learned counsel for the complainant as well as learned State Counsel to quote any provision of law, whereby any civil servant, who being negligent towards his official duty while taking any decision can be charged under The House Building Finance Corporation Act, 1952, Banks (Nationalization) (Amendment) Act, 2011 as well as Citizenship Act, 1952 alongwith Memorandum and Articles of Association of HBFCL, wherein negligence of the officials can be an offence, against which the petitioner can be charged, they failed to answer such proposition and to point out any provision of law through which the offences referred in the FIR can be alleged against the petitioner or any of the other co-accused.

16. Bare reading of entire record speaks volume about the conduct of respondent No.2, who has some personal vendetta against the petitioner, especially when tenure of the petitioner has already been expired on 16.12.2012 by virtue of judgment rendered by this Court in writ petition No.2488/2012 and FIR has been lodged with delay on 24.04.2018 after six years without any justification. Such kind of high handedness on part of FIA Authorities clearly falls within meaning of abuse of process of law, whereas High Court in such circumstances is equipped with inherent powers U/S 561-A, Cr.P.C to prevent abuse of process of any Court or otherwise to secure ends of justice.

17. I have scanned the entire record and the question raised in the writ petition for quashing of FIR, I am of the clear view that following ingredients spell out from the record.

- (i) No offence is made out.
- (ii) Registration of case is proved to be malafide on face of the record.
- (iii) Case is purely of professional negligence on the part of officials, who have scrutinized the recruitment application and criminal proceedings are not warranted under the law.
- (iv) FIA has no jurisdiction to enter into case of professional negligence.
- (v) Trial of the accused persons would amount to un-necessary harassment and abuse of process of law.

18. Keeping in view the above situation, exceptional circumstances are apparent and the Courts are equipped with powers to protect right of an individual, who has been exposed to un-necessary harassment floating on the record.

19. While going through the reported judgments 2011 SCMR 1937 (Rana Shahid Ahmed Khan vs. Tanveer Ahmed and others), 2015 P Cr. L J 1667 [Islamabad] (Zohra Pirzada vs. SSP, Islamabad), 2013 P Cr. L J 678 [Islamabad] (Rizwan Khan vs. The State and 02 others), 2014 YLR 429 [Karachi] (Bashir Ahmed vs. VIIIth Family Judge, District West, Karachi), 2014 MLD 795 [Peshawar] (Aftab Ahmed vs. The State and 04 others), 2016 P Cr. L J 1144 [Gilgit-Baltistan Chief Court] (Faisal Iqbal vs. State) and 2009 SCMR 141 (Muhammad Aslam (Amir Aslam) vs. District Police Officer, Rawalpindi), this Court is of the view that in present case extra ordinary exceptional circumstances are apparent on the record. The registration of the FIR is based upon malafide and personal vendetta without any evidence and no offence whatsoever from the FIR and final report is made out. The entire dispute has already been resolved by this Court through writ petition No.2488/2012 and as such there is no alleged criminality referred against any of the public servant in the said case. The petitioner completed tenure of his appointment in the year 2012 and is no more in service, therefore, while considering above background, writ petition No.597/2019 is allowed, FIR No.04, dated 24.04.2018, U/S 420, 468, 471, 109, 34, PPC & 5(2)47, PCA, P.S FIA/CCC, Islamabad is hereby quashed alongwith the proceedings initiated by learned Special Court Central, Islamabad.

20. I have also gone through the para-wise comments filed in writ petition No.853/2019, which reveal that name of the petitioner has been placed on stop list on the ground that criminal case is registered against him, which is under trial. I have confronted Additional Direction (Law) FIA to substantiate concept of stop list and black list under the Exit From Pakistan (Control) Ordinance, 1981 and Exit From Pakistan (Control) Rules, 2010, whereupon he has candidly conceded that there is no concept of stop list or black list under the said laws rather name of an individual can only be placed on ECL after affording him opportunity of show

cause in the public interest. Exit From Pakistan (Control) Ordinance, 1981 vests the powers to Federal Government to place name of an individual on ECL, whereas the reasons, which have been considered by the Director General, Immigration for placing name of the petitioner on stop list are not well founded as the petitioner is not guilty of corruption or misuse of his authority, causing loss to government property, embezzlement or involvement in terrorism, conspiracy, in heinous crime or threatening national security, neither he is tax defaulter, loan defaulter or involved in any drug trafficking. Therefore, writ petition No.853/2019 is allowed, the FIA authorities are directed to remove name of the petitioner from the stop list or any other list notified by them as the reason for placing name of the petitioner on the stop list is no more in the field as well as due to quashing of the FIR No.04/2018 alongwith its proceedings.

21. Before parting with this judgment, it is imperative to note that the concerned I.O of FIR No.04, dated 24.04.2018, U/S 420, 468, 471, 109, 34, PPC & 5(2)47, PCA, P.S FIA/CCC, Islamabad has not considered the record position in its true perspective, especially the application form, whereby the petitioner has neither concealed his citizenship nor foreign passport and the petitioner has suffered for such malicious prosecution only due to such incompetent FIA official. Even Law Directorate FIA has not scrutinized the record in proper manner and given their recommendations, in result whereof the petitioner has been challaned in the FIR despite the fact that no criminal misconduct is apparent on record on the part of the petitioner. Therefore, copy of this judgment be transmitted to Director General, FIA, who shall take appropriate measures to protect innocent persons from unnecessary criminal prosecution, which burdens the Courts as well as the public exchequer. The Director General, FIA shall also ensure that such kind of incompetent delinquent officials of FIA shall not be entrusted with investigation of these cases and Law Department FIA shall be given proper training, who are simply processing the inquires in mechanical manner without considering intent of law

(MOHSIN AKHTAR KAYANI)
JUDGE