

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.2379-2018

Sayed Zulfikar Abbas Bukhari

Vs.

Federation of Pakistan etc.

Petitioner by : Mr. Sikandar Bashir Mohmand, Advocate
 Mr. Mustafa Aftab Sherpao, Advocate
 Syed Zulqarnain Safdar, Advocate
 Syed Saad Ali Shah & Syed Zafar Ali Shah,
 Advocates
 Petitioner in person.

Respondents by : Raja Khalid Mahmood Khan, DAG
 Mr. Awais Haider Malik, State Counsel
 Mr. Naeem Ashraf, A.D. FIA, Mr. Usman
 Nawaz, A.D. (Immigration & Passport),
 Sardar Muzaffar Ahmad Khan, DPG, NAB,
 Mr. Ahmed Saeed Wazir, Deputy Director,
 NAB & M. Azeem Akhtar, Assistant (ECL),
 Ministry of Interior.

CASE NO. : W.P. NO.2384-2018

Muhammad Kausar

Vs.

Federation of Pakistan etc.

Petitioner by : Mr. Inam-ur-Rahim, Advocate
Respondents by : Raja Khalid Mahmood Khan, DAG
 Mr. Awais Haider Malik, State Counsel
 Mr. Naeem Ashraf, A.D. FIA, Mr. Usman
 Nawaz, A.D. (Immigration & Passport),
 Sardar Muzaffar Ahmad Khan, DPG, NAB,
 Mr. Ahmed Saeed Wazir, Deputy Director,
 NAB & M. Azeem Akhtar, Assistant (ECL),
 Ministry of Interior.

Date of decision : 03.07.2018

AAMER FAROOQ J. This judgment shall decide instant petition as well as W.P. No.2384-2018, as common questions of law and facts are involved.

2. The petitioner, in the instant petition, is a dual national holding Pakistani Nationality as well as citizenship of United Kingdom of Great

Britain and Northern Ireland. On 11.06.2018, the petitioner while being in Pakistan, planned to travel from Islamabad to Kingdom of Saudi Arabia for performing Umrah. When he was at the Airport, it was informed that he cannot leave the country, as his name is in 'Black List', which is maintained by the Ministry of Interior i.e. respondent No.1. On request of the petitioner, one time permission was allowed to him to leave the country for a period of six days. Apparently, the name of petitioner has been placed in 'Black List' on the recommendations of respondent No.1 by respondents No.2 & 3, as respondent No.4 had made a request to respondent No.1 for placing the name of petitioner on Exit Control List on the basis of an inquiry against him, in which, call-up notices were issued.

3. Learned counsel for the petitioner, *inter alia*, contended that respondents have acted without lawful authority while placing the name of petitioner on the 'Black List'. In this regard, it was contended that 'Black List' is maintained by respondent No.2 under Passport and Visa Manual and its parameters are provided in clause 51. It was further submitted that parameters provided in the referred clause are not attracted in the facts and circumstances of instant case. It was pointed out that under section 8 of the Passport Act, 1974, the passport of any person can be cancelled or confiscated in accordance with the procedure provided in the same and in presence of the statutory provision, the executive manual has no statutory backing. It was also submitted that the petitioner was neither intimated prior to placing of his name on 'Black List' nor after it and has been condemned unheard. Learned counsel also contended that placing the name of petitioner on 'Black List' tantamount to violation of his fundamental rights as enshrined in the Constitution. Reliance was placed on cases reported as 'Mst. Nasreem Begum and another Vs. Ministry of Interior, Government of Pakistan through its

Secretary and 2-others' (PLD 2012 Islamabad 17), 'Pakistan Muslim League (N) through Khawaja Muhammad Asif, MNA and others Vs. Federation of Pakistan through Secretary, Ministry of Interior and others' (PLD 2007 Supreme Court 642), 'Wasatullah Jaffery Vs. Ministry of Interior through Secretary, Federal Government of Pakistan and 4-others' (PLD 2014 Sindh 28), 'Mian Ayaz Anwar Vs. Federation of Pakistan through Secretary Interior and 3-others' (PLD 2010 Lahore 230), 'Messrs Mustafa Impex, Karachi Vs. The Government of Pakistan through Secretary Finance, Islamabad and others' (PLD 2016 Supreme Court 808), 'Ghulam Hussain Baloch and another Vs. Chairman, National Accountability Bureau, Islamabad and 2-others' (PLD 2007 Karachi 469) & 'Syed Sami Ullah Al-Quadri Vs. Federation of Pakistan through Secretary, Ministry of Interior and 6-others' (2009 CLC 1314).

4. Learned counsel for the petitioner in W.P. No.2384-2018, *inter alia*, contended that Sayed Zulfikhar Abbas Bukhari was allowed to travel on a Chartered Plane from Noor Khan Airbase, Rawalpindi, which is operated by Pakistan Air Force. It was submitted that use of Air Force Base for Chartered Flights is not permissible therefore the persons responsible for the same, be taken to task.

5. Learned Deputy Attorney General, *inter alia*, contended that name of the petitioner was placed on 'Black List', as request for placing his name on Exit Control List, was received from National Accountability Bureau. In this behalf, it was contended that in light of the decision of Hon'ble Supreme Court of Pakistan in case reported as 'Messrs Mustafa Impex, Karachi Vs. The Government of Pakistan through Secretary Finance, Islamabad and others' (PLD 2016 Supreme Court 808), the same can only be done by the Federal Government i.e. the Prime Minister and the Cabinet; that since the Cabinet was not available at the time and the Sub-Committee for the said purpose,

has been constituted subsequently therefore by way of abundant caution, name of petitioner was placed on 'Black List'. It was submitted that name of the petitioner was placed in 'Black List' and the same was in his notice.

6. Learned counsel for National Accountability Bureau submitted that request was made to the Ministry of Interior specifically for placing the name of petitioner on Exit Control List, as there is a pending inquiry against him. It was submitted that respondent No.1 did not inform National Accountability Bureau regarding the placement of name of petitioner on 'Black List'.

7. The facts, leading to filing of these petitions, have been mentioned with brevity hereinabove.

8. During the course of arguments, an objection was taken by learned counsel for National Accountability Bureau that since relief has also been sought against the Bureau therefore the matter be heard by the Division Bench. Today, before start of arguments, learned counsel for the petitioner contended that for the time being, only presses the prayer mentioned at Sr. No.(B) of the prayer clause. The prayer sought by the petitioner is as follows:-

“The Honourable Court may graciously set aside, strike down and declare as without lawful authority, of no legal effect and void ab initio the Impugned Decision that is; any action (s), order(s), decision(s), directive(s), travel restrictions(s) or ban directly or indirectly having or purporting to have the effect of curtailing (wholly or partially) the fundamental and inalienable right of the petitioner from freely entering and existing the country (including without limitation, any decision, order or directive placing the Petitioner on the ECL or any so called Blacklist’) or any other manifest or classification howsoever called having similar effect as well as other related orders, decisions, notifications and memoranda”.

9. Respondent No.2 has taken up the position that the name of petitioner was placed on 'Black List' on the directions of Ministry of Interior, Islamabad vide letter dated 15.05.2018. Letter dated 15.05.2018 issued by respondent No.5 provides that a decision has been taken to place the name of Syed Zulfiqar

Abbas Bukhari on 'Black List'. The request was made by respondent No.2 for doing of the needful. No reason whatsoever was provided in the letter for taking the referred action. It is also not provided as to who has decided for placing the name of petitioner on 'Black List'.

10. The provision for placing the name of a person on the 'Black List' is provided in the Passport and Visa Manual, 2006, which apparently, has no statutory backing and is a Manual created by the Executive Authority and operates as SOP for respondent No.2. The procedure for placing name of any person on 'Black List' is contained in clause 51 of the Manual, which is as follows:-

51. Procedure for blacklisting

(A) *"If any Passport Issuing Authority finds that a certain citizen of Pakistan is fit to be blacklisted for passport facilities, it would refer the matter to the Director General, Immigration and Passport giving such person's full particulars and reasons for his blacklisting. The Director General, Immigration and Passports will obtain the orders of the Ministry of Interior in the matter, where necessary.*

(B) *Federal Government is vested with powers to regulate the departure from Pakistan and visit abroad of its citizens under the provisions of "Passport Act, 1974" and "The Exit from Pakistan (Control) Ordinance, 1981" In order to check the exit of individuals from Pakistan, Black List / Exit Control List are maintained. The inclusion into and deletion from Exit Control List is the sole prerogative of the Ministry of Interior. Brief description of Black List categories "A" & "B" is as under:-*

(i) Category 'A': Under this category the names of those persons are placed who are believed to be involved in anti State activities or whose visit to foreign countries is considered to be prejudicial to the State interest, or, whose visit abroad is banned from security point of view. The name in this list are included or removed by the Ministry of Interior.

(ii) Category 'B': Under this category, the names of those persons are placed who are involved in the offences punishable under section 6

of Passport Act 1974 or those who were refused passport under Para 21 of Passport & Visa Manual. The names of persons are also included in this list on the recommendations of government agencies / departments as well as those who are deported/repatriated from abroad. Director General, Immigration and Passports is competent to place and remove names in this list.

- (C) *Normal period of retaining a person on the blacklist is five years. However, a person can be kept on blacklist even beyond five years provided the referring department recommends for further retention having full justification in this regard. The competent authority viz Additional Secretary, Ministry of Interior in case of category 'A' and Director General, Immigration and Passports in case of category 'B' may consider deletion of any person from such list on his appeal even before the normal period of five years. Both the blacklist categories 'A' & 'B' are subject to periodical review in consultation with the relevant agency / department on whose instance the individual was blacklisted".*

The bare perusal of referred clause shows that the decision to place the name of any citizen of Pakistan on 'Black List' is taken by the passport issuing authority and it has to be provided full particulars of the referred person along with reasons for his blacklisting. In this regard, Director General, Immigration and Passports obtains order of the Ministry of Interior, where necessary. There are two Categories of Blacklist. It was submitted before the Court that name of the petitioner is in Category 'A', as his leaving the country was prejudicial to the State's interest. The names in Category 'A' List are added or removed by Ministry of Interior.

11. It is an admitted position that respondent No.4 is conducting an inquiry against the petitioner due to various allegations that he, in connivance with others, has established off-shore companies in the British Virgin Islands. It was on that basis that NAB made a request to respondent No.1 that name of petitioner be placed on Exit Control List inasmuch as if he

leaves the country, the same shall hamper the inquiry, as petitioner is a Dual National.

12. The parameters for placing the name of petitioner on Exit Control List are different and governed by the Exit from Pakistan (Control) Ordinance, 1981 and the Rules framed there-under. The reasons for placing the name of any citizen of Pakistan in Category 'A' of Blacklist are where it is established that a person is involved in anti State activities; or whose visit to foreign countries is considered to be prejudicial to the State interest; or whose visit abroad is banned from security point of view.

13. The reasons advanced by respondent No.4 i.e. National Accountability Bureau for placing the name of petitioner on Exit Control List are different from ones provided in Category 'A' hence there was no justification or basis for issuance of letter dated 15.05.2018. Even-otherwise, it is an established principle that before taking any adverse position or passing an order, which curtails the liberty or movement of any individual, he is to be provided opportunity of hearing. Admittedly, in the instant case, neither the petitioner nor the National Accountability Bureau was intimated prior to issuance of aforementioned letter.

14. The Hon'ble Lahore High Court in case reported as 'Mian Ayaz Anwar Vs. Federation of Pakistan through Secretary Interior and 3-others' (PLD 2010 Lahore 230) observed that right to travel is part of human liberty as travel signifies freedom and liberty therefore 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 the Constitution. Similarly, the Hon'ble Supreme Court of Pakistan in case reported as 'Pakistan Muslim League (N) through Khawaja Muhammad Asif, MNA and others Vs. Federation of Pakistan through Secretary, Ministry of Interior and others' (PLD 2007 Supreme Court 642), has

held that 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. It was further observed that 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. The august Apex Court held that 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 executive any power to deal with a citizen or other persons in Pakistan in contravention of a Fundamental Right. In case reported as 'Syed Sami Ullah Al-Quadri Vs. Federation of Pakistan through Secretary, Ministry of Interior and 6-others' (2009 CLC 1314), the Division Bench of Hon'ble Sindh High Court observed as follows: -

“11. Thing being the position, we have no hesitation to observe that the action taken by the official respondents against the petitioner on 10.03.2008 and their subsequent action of black listing his passport is not only in violation of the fundamental rights guaranteed to him under Article 15 of the Constitution, but also against the fundamental principles of natural justice (Audi Alteram Partem), which is to be read as part and parcel of every statute, even if not specially provided in it. Though in the instant case section 8 of the Passport Act, 1974, referred by Mr. Umer Hayyat Sandhu, specifically contemplates for an opportunity of hearing to the concerned party in a like situation. The case-law referred at the Bar, as discussed above, also fortify our view”.

15. The upshot of the above case law is that freedom of movement includes leaving the country of origin and any curb thereto amounts to violation of fundamental right. If any restriction at all is to be placed, the same has to be

supported by law. The executive action, which does not have the backing of law, cannot stand alone. Section 8 of the Passports Act, 1974 though provides for confiscation or cancellation of the passport yet also specifically provides that an opportunity of hearing is to be granted prior thereto. Before placing the name of a person on the Black List, an opportunity of hearing has to be afforded to him, failing which, the action taken would be in violation of principles of natural justice.

16. Moreover, as mentioned above, letter dated 15.05.2018 does not provide any reasons for placing the name of petitioner on 'Black List' therefore is violative of Section 24-A of General Clauses Act, 1897 and also indicates lack of application of mind on the part of competent authority

17. In the reply filed by Ministry of Defence, it has been mentioned that along with Noor Khan Air Base, a strip is in the control of Civil Aviation Authority and the Chartered Flights are being operated therefrom and Rawal Lounge and other facilities of Benazir International Airport are still in use for the said purpose. In this view of the matter, the Airbase has not been used but only a strip alongside it was used with the approval of the competent authority.

18. In view of the foregoing, instant writ petition is allowed in terms that of aforementioned prayer at Sr. No.(B) of the prayer clause of the petition. Consequently, respondents No.1 & 2 in this regard are directed to do the needful. It is needless to observe that respondent No.1 shall be at liberty to take appropriate action in accordance with law on the application of respondent No.4 for placing the name of petitioner on Exit Control List.

19. The issues and queries raised in W.P. No.2384-2018 stand answered therefore the same is disposed of with the observation that respondents shall

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strictly act in accordance with law regarding the usage of Airbase and other facilities.

(AAMER FAROOQ)
JUDGE

Zawar

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