

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. W.P. 164-2011 200

Titled Syed Zahir Shah. Vs Federation of Pakistan.

(a) Judgment approved for reporting

☒ Yes / ~~No~~

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

~~Yes / No~~

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W. P. No. 164 of 2011.

Syed Zahir Shah Versus Federation of Pakistan
Through The Secretary,
Ministry of Interior Etc.

DATE OF HEARING:	<u>26-5-2011.</u>
PETITIONER BY:	Barrister Masroor Shah.
FOR STATE:	Mr. Shabbir Ahamd Abbasi, Standing Counsel,
FOR NAB: -	Mr. Khalid Mehmood, Sr. Prosecutor & Mr. Idrees Rafique Bhatti, Prosecutor.
FOR DG PASSPORT:	Mr. Jawad Ahmad, Asstt. Director (Policy),
FOR M/O INTERIOR:	Mehmood Ahmad, Superintendent, ECL.

ORDER

MUHAMMAD ANWAR KHAN KASI, J.

Syed Zahir Shah, Former Civil Servant/DG Peshawar Development Authority (PDA) through this constitution petition seeks direction against the respondents i.e. M/o Interior, DG (Immigration & Passport) and NAB to the effect that they directed to remove his name from Exist Control List (ECL) and be also restrained from illegally interfering with the right of the petitioner to move freely. It has also been prayed that respondents be directed to issue/renew his Passport, the application whereof has been submitted through Token No. 1080169359, dated 9-12-1990.

2. Precisely, the facts contained in Writ Petition are that the petitioner was arrested under NAB Ordinance, 1999 and three references were filed against him; in the First reference though he was convicted by the AC No.1 Peshawar, yet his appeal before the

Hon'ble Peshawar High Court, was accepted and he was acquitted; appeal against that decision of NAB authorities is still pending before the Apex Court in which no suspension order with regard to acquittal of the petitioner was passed; in the other two references he was convicted and had already undergone the entire sentence; he was released from the Prison in June, 2001 and his appeals against his two convictions under the two references are still pending adjudication; that petitioner applied for issuance of Machine Readable Passport through Token No. No. 1080169359, dated 9-12-1990, but was not provided the same by respondent No.1 due to the fact that name of the petitioner is mentioned in ECL. He also contacted DG Immigration, who confirmed the existence of his name on ECL but remained unable to advance any explanation for doing so, which necessitated filing of instant petition on the grounds that the actions taken by the respondents are sheer violation of Sub-Section 2 of Section 3 of Exit from Pakistan (Control) Ordinance, 1981 and in contravention of his fundamental rights guaranteed to him by the Constitution.

3. According to comments submitted by respondent No.1/Secretary, M/o Interior, name of the petitioner was placed on ECL on the recommendations of NAB, in compliance with judgment passed by the Hon'ble Supreme Court of Pakistan in NRO Cases on 16-12-2009.

4. However, copy of Letter by Addl. Director ECL dated 10-3-2011 addressed to The Section Officer (ECL), M/o Interior, Islamabad, has been submitted whereby it transpires that NAB has no objection if the name of Syed Zahir Shah, Ex. DG PDA be deleted from ECL.

5. Para-8 of the comments submitted by DPGA NAB reads as under:-

8. That the petitioner has been convicted in three cases. In one case he was sentenced to pay a fine of Rs.10 million which was later on set aside by the appellate court, in second case his conviction and

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sentence was upheld by the High Court and he himself has gone to the August Supreme Court of Pakistan while in third case, he was convicted and sentenced to pay fine only, which the accused had deposited. The petitioner had already completed his sentence. According to the record of this Bureau, initially, he was placed on ECL by NAB Authority (KPK) but later on his name was removed from the ECL. His name might have been placed on the request of any other authority but however, the petitioner is no more required in the Court and pending legal proceedings will not be affected, therefore, there may be no objection if his name is removed from ECL. (Underlined by us)

6. Learned Standing Counsel, learned Prosecutors NAB and representatives of the respondents present in Court have no objection over removal of name of the petitioner from ECL and issuance of direction for provision of Passport to him.

7. To sum up, it is now quite clear that the petitioner was convicted in three references. In one case he was sentenced to pay a fine of Rs.10 million which was later on set aside by the appellate court. In second case his conviction and sentence was upheld by the High Court and he himself has gone to the August Supreme Court of Pakistan while in third case, he was convicted and sentenced to pay fine only, which the petitioner had deposited. The petitioner has already completed his sentence. Initially, his name was placed on ECL by NAB Authority (KPK) but later on his name was removed from the ECL. As per comments/statements of representative of respondents and their Law Officers, the petitioner is no more required in the Court and pending legal proceedings will not be affected, therefore, they have no objection if his name is removed from ECL.

8. Now we advert to the legal aspect of the case. The question whether right to travel abroad is a fundamental right guaranteed by the Constitution of Islamic Republic

of Pakistan, has been discussed by the Apex court in case titled Government of Pakistan & another Versus Dada Amir Haider Khan (PLD 1987 Supreme Court 504), wherein it was held as under:-

“ Moreover a citizen’s right to travel abroad is an important aspect of the citizen’s liberty and is closely related to the rights of free speech and association. As nations in the world become politically and commercially more dependent upon one and another and foreign policy decisions have come to have greater impact upon the lives of the citizen, the right to travel has become correspondingly more important. Though travel, by private citizens as well as by journalists and Governmental officials, information necessary to the making of informed decision can be obtained. And, under our constitutional system ultimate responsibility for the making of informed decisions rests in the hands of the peoples.”

9. This question was also answered in case Wajid Shamsul Hassan V. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad (PLD 1997 Lahore 617), as under:-

“ In view of above discussion, I have no doubt in my mind that the right of a citizen to travel abroad is a fundamental right guaranteed by Articles 2A, 4, 9, 15 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Abridgement of this fundamental right by the State through the legislative or an executive measure has to be tested on the touchstone of the Constitutional provisions. The life, liberty or property of a citizen cannot be taken away or adversely affected except in accordance with law. “



10. Thus, in view of above dictums, we have no doubt in our mind that the right of a citizen to travel abroad is a fundamental right guaranteed by Articles 2A, 4, 9, 15 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 and abridgment of this fundamental right by the State through the legislative or an executive measure has to be tested on the yardstick of the Constitutional Provisions.

11- On being confronted with above legal position, learned Standing Counsel failed to controvert the same.

12. Following above authoritative pronouncements, it has now become clear like crystal that right of a citizen to travel abroad is a fundamental right guaranteed by the Constitution of Islamic Republic of Pakistan, 1973, which can not be taken away.

13. For what has been discussed above, the instant petition stands allowed as prayed for and in consequence thereof the respondents are directed to remove the name of the petitioner from Exit Control List and to issue him a Machine Readable Passport.

(RIAZ AHMAD KHAN)
JUDGE

(MUHAMMAD ANWAR KHAN KASI)
JUDGE

M.Suhail

Approved for Reporting

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