

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.272/2018
Muhammad Ashfaq Aziz
versus
Federation of Pakistan & 4 others

Petitioner by: Ms. Farah Rana, Advocate.

Respondents by: Barrister Mumtaz Ali, A.A.G.
Malik Awais Haider, State Counsel.
Mr. Mohsin Kamal Awan, Advocate for Ministry of Foreign Affairs/ Respondent No.4.
Mr. Khalil Ishaq, Law Officer, NADRA.
Malik Riaz, Dy. Secretary (Law-II), Ministry of Interior.
Shahzad Anjum, S.O. (Lit-I), Ministry of Interior.
Muhammad Mubashir Khan, Director (Europe-I), Ministry of Foreign Affairs.
Sana Ullah Khan, Dy. Secretary, Cabinet Division.

Date of Hearing: 21.11.2019.

MOHSIN AKHTAR KAYANI, J: Through the captioned writ petition, the petitioner has prayed for the following relief:

"Under the above given circumstances it is most humbly prayed that the instant writ petition may kindly be accepted, respondents may kindly be summoned before this Honourable Court and they be directed to acts strictly in accordance with law, they be directed to fulfill all the legal lacunas in the Transfer of Offender Ordinance 2002 by examine/evaluate the whole said Ordinance, so that the respondents No.2 & 5 would decide the application of the petitioner and others on the same subject to decide the same in accordance with law in the interest of justice."

2. Brief facts referred in the instant writ petition are petitioner's real brother i.e. Muhammad Tariq Aziz (*hereinafter referred to as "convict"*) has been convicted in UK and awarded life imprisonment for the commission of offence of murder, regarding which the petitioner moved an application to Government of UK for repatriation of the convict. Pursuant to processing of the said application the Pakistan High Commission at London forwarded the documents of the convict to

the Ministry of Interior, and the said Ministry after receiving the same vide letter dated 17.02.2014 sought submission of an affidavit from the petitioner regarding bearing of expenses for the transfer of his brother (convict) under the Transfer of Offenders Agreement between Pakistan and UK. Consequently, the petitioner submitted an affidavit, but of no avail and the convict was not repatriated back to Pakistan. Feeling aggrieved thereof, the petitioner filed W.P. No.1460/2017 (Muhammad Ashfaq Aziz vs. FOP, etc.) before this Court, whereby direction was issued to the Ministry of Interior to decide the pending application of the applicant within the period of 15 days. However, the lethargic attitude of the officials of Ministry of Interior constrained the petitioner to file Crl. Org. No.263-W/2017 (Muhammad Ashfaq Aziz vs. FOP, etc.), whereby the officials of Ministry of Interior explained their position that the petitioner was informed vide letter dated 09.08.2017 that due to the ongoing process of amendments in the Transfer of Offenders Ordinance, 2002 his application for transfer of the convict could not be processed and accordingly the same was turned down. On the basis of said stance of Ministry of Interior, the contempt application was disposed of vide order dated 10.11.2017. Nevertheless, after the elapse of 02 months period, no amendments were made in the said Ordinance of 2002. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that the convict has not yet been transferred/repatriated to Pakistan despite passing of clear direction by this Court; that the instant writ petition is pending since 25.01.2018 and numerous orders have been passed, whereby the Ministry of Justice, National Offender Management Service UK had already taken the decision for transfer of the convict, but the authorities in Pakistan remained reluctant in not performing their lawful duties under the Transfer of Offender Treaty between Pakistan and UK; that the concerned Secretaries as well as Ambassador of Pakistan in UK be

proceeded against in terms of Contempt of Court Ordinance, 2003 for not performing their duties and even a show cause notice was issued by this Court to that extent.

4. On the other hand, learned AAG along with representatives of the Ministry of Foreign Affairs and Ministry of Interior contended that the convict would be repatriated to Pakistan within 03 months as every possible efforts are being made to comply with the terms of the treaty, and as such, they could not compel the authorities in UK beyond certain level as the concerned department of UK is not under the direct control of the authorities in Pakistan.

5. Arguments heard, record perused.

6. Perusal of the record reveals that Muhammad Tariq Aziz (convict), presently confined in UK, requested the authorities in UK for his transfer to Pakistan to serve his remaining sentence in terms of the Transfer of Offenders Ordinance, 2002, which was processed by the authorities in UK, but the matter remained pending with the Ministry of Interior due to suspension of the treaty between UK and Pakistan, and as such, the UK Government required the verification of convict's credentials from NADRA together with guarantee that the convict will serve his remaining sentence in Pakistan as well as the details of remissions which he would earn during his imprisonment in Pakistan. The Ministry of Interior has notified the said details to the concerned department of the National Offender Management Service, UK through the High Commission for Pakistan in London, but the matter could not be finalized.

7. The order passed by this Court dated 01.02.2019 reflects the history of this case that the petitioner had filed W.P. No.1460/2017, which was disposed of vide order dated 25.07.2017 with direction to the Secretary, Ministry of Interior to decide the pending application moved by the petitioner, however, due to non-compliance of the said order, the petitioner filed Crl. Org. No.263-W/2017,

whereby it was revealed that petitioner's request was turned down. This action of respondents constrained the petitioner to file second writ petition and during the proceedings of the petition, it has been pointed out that UK Government as well as the Government of Pakistan are in process of signing the amended protocols to the Transfer of Offenders Agreement, though the said MoU was signed later on and the amendment was taken effect.

8. The record further reflects that the National Offender Management Service (UK) has addressed a letter to the convict dated 05.06.2014 informing him that the National Offender Management Service has temporarily been suspended due to the illegal acts on the part of State officials in Pakistan for releasing the convicts on their arrival in Pakistan without completion of their sentence and due to the said illegalities by the prison authorities in Pakistan, the National Offender Management Service (UK) and H.M. Prison & Probation Service (UK) lost their trust on the authorities in Pakistan.

9. This Court also issued contempt of court notices to the Secretaries, Ministry of Interior and Ministry of Foreign Affairs as well as to the Ambassador of Pakistan in UK (London) with clear direction to do lawful acts for transfer of the convict to Pakistan and on each and every occasion, the said Secretaries undertook to perform their duties, but they could not abide by their wordings, even the matter was referred to the Prime Minister of Pakistan through Secretary, Cabinet Division to take appropriate actions against the officials who have failed to perform their duties vide order dated 18.09.2019. The Secretary, Ministry of Foreign Affairs submitted letter of the H.M. Prison & Probation Service (UK) dated 29.07.2019 referring the case of convict by acknowledging the note verbale dated 17.07.2019 of the Government of Pakistan, whereby the later consented to repatriate the convict to Pakistan, but due to non-provision of relevant information and details, the matter could not be finalized. After hectic exercise

by different departments, the relevant information for probable date of release of the convict has been calculated in this case and conveyed to UK Government, which are as under:

<i>Substantive sentence served including UT period u/s 382-B Cr.P.C.</i>				<i>Total Remission earned</i>		
	Y	M	D	Y	M	D
<i>Undential period</i>	00	00	337	05	01	04
<i>Substantive sentence served w.e.f. 24.02.2012 to 20.02.2028</i>	15	11	19			
<i>Total sentence served including period spent on remand</i>	15	10	26			
<i>Effective Remission earned</i>	05	01	04			
<i>Total sentence served including remission earned</i>	22	00	00			
<i>His tentative final date of release is fixed as 12.02.2028</i>						

10. The para-wise comments submitted by the Ministry of Interior reveal that they conceded to the request of petitioner regarding transfer of the convict to Pakistan after due verification from the Ministry of Foreign Affairs, whereafter the matter was transmitted to UK Government, but despite all these efforts, the Ministry of Interior and Ministry of Foreign Affairs as well as the Ambassador of Pakistan in UK have failed to effect the transfer of convict to Pakistan. Consequently, warnings were issued to the Secretaries, Ministry of Interior and Ministry of Foreign Affairs as well as to the Ambassador of Pakistan in UK for not effecting the transfer of the convict. In this regard, separate contempt of court proceedings have been initiated by filing a separate criminal original, which is pending before this Court, even the petitioner has followed all the conditions required for transfer of the convict as well as submitted an affidavit to the extent of bearing the probable expenses on traveling of the convict to Pakistan.

11. In compliance of the last order of this Court, dated 05.11.2019, the Deputy Secretary, Cabinet Division has submitted compliance report elucidating the placing of cases of Secretaries, Ministry of Interior and Ministry of Foreign Affairs as well as of the Ambassador of Pakistan posted in United Kingdom to the Prime Minister of Pakistan for appropriate orders, whereupon the Prime Minister has directed the Establishment Division for future course of action

against the said three (03) officers, but no action has been suggested against the said Secretaries till date, therefore, it is expected from the Secretary, Establishment Division to proceed with the matter and submit a compliance report regarding the future course of action suggested to the Prime Minister of Pakistan for compliance of order passed by this Court.

12. I have confronted the officials/officers present before this Court regarding any progress made with reference to transfer of the convict to Pakistan, whereupon the representatives of Ministry of Foreign Affairs, Ministry of Interior, Director (Europe-I) of Ministry of Foreign Affairs as well as Deputy Secretary (Law-II) and S.O. (Litigation), Ministry of Interior contended that the convict will be expatriated to Pakistan within the next 02 to 03 months. The said officers under the instructions of Secretaries, Ministry of Interior and Ministry of Foreign Affairs have also given their written undertaking in this regard after consultation with concerned Secretaries, which has been placed on record and the contents of the same are reproduced as under:

"The Ministry of Foreign Affairs has sent letter dated 20th November, 2019 to British High Commission, regarding the earliest tentative date of release, as required by UK Prison and Probation Service.

In this regard meeting with Acting High Commissioner UK in Pakistan, Mr. Richard Crowder, was held in Ministry of Foreign Affairs on 20th November 2019. In the meeting it was stressed upon the UK authorities to conclude the matter so that the prisoner is handed over to Pakistan.

The Pakistan High Commissioner in UK has also been directed through letter and telephonically to ensure the early return of the prisoner. The Pakistan High Commission UK, has also contacted the UK authorities to secure the early transfer.

It is respectfully submitted that the highest channels of the government have been activated to implement High Court order. Please note despite our best efforts we are dealing with a sovereign country and are perusing the matter without any let up. We are hopeful that we shall be able to commit UK authority to return the prisoner within two to three months period at the earliest, subject to approval of UK authorities.

We respectfully pray before this Hon'ble Court to recognize our faithful efforts to implement this Hon'ble Court's directions by granting us two to three months time.

**On behalf of
Respondent No.1
(Deputy Secretary,
M/o Interior)**

**On behalf of
Respondent No.2 & 3
(Director, Europe-I,
Ministry of Foreign Affairs)**

13. In view of the aforementioned undertaking submitted by the aforesaid three (03) officers before this Court, they as well as the Secretaries of the concerned ministries are bound to comply with their own undertaking and direction of this Court for transfer of the convict (Muhammad Tariq Aziz) to Pakistan withⁱⁿ three (03) months till 28.02.2020, whereafter a compliance report shall be submitted in this regard, through Registrar of this Court in chamber. Accordingly, the instant writ petition stands **DISPOSED OF** in above terms.

14. Before parting with the judgment, it is pertinent to mention here that, if, in case, the convict is not transferred in compliance of the undertaking given by the Secretaries, Ministry of Foreign Affairs and Ministry of Interior, the petitioner may initiate fresh action against the said Secretaries as well as against the Ambassador of Pakistan posted in UK through Contempt of Court proceedings, before this Court for non compliance of their undertaking, if so advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 09.12.2019.

JUDGE

Khalid Z.