

JUDGEMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.2372/2015
Pakistan Football Federation etc Vs Govt. of Pakistan etc

Petitioner by: **Mr.Muhammad Afzal Khan,**
Advocate.

Respondents: **Syed Hasnain Ibrahim Kazmi,**
D.A.G.
Mr.Qaiser Masud, Addl.Director,
FIA.

Date of hearing: **22.12.2015.**

AAMER FAROOQ, J.- Through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioners have challenged enquiry No.100/2015 against them initiated on the complaint of respondents No.4 & 5.

2. The facts, in brief, are that Petitioner No.1 i.e Pakistan Football Federation is a body at the Federal level with respect to football. Petitioner No.1 has a duly approved constitution and is controlled and managed under the same. Petitioner No.2 & 3 are the office bearer of petitioner No.1. Petitioner No.1 falls and is controlled by federation international de Football Association (FIFA) and is financed through sponsors and other fundings. In this behalf Petitioner No.1 also maintains accounts with various financial institutions. Respondents No.4 & 5 filed a complaint with respondents No.1 to 3 (enquiry No.100/2015) on the basis of which accounts of Petitioner No.1 maintained with various financial Institutions were attached/frozen.

3. Learned counsel for the petitioners, interalia, submitted that respondents No.2 & 3 have no authority / jurisdiction to conduct an inquiry or investigation against petitioner No.1 or its office bearers

as the former is neither a government entity nor is controlled by the Federal Government. It was further contended that the office bearers/employees of Petitioner No.1 are not public servants, therefore they do not fall within the scope and jurisdiction of respondent No.2 as provided in Federal Investigation Agency Act, 1974 (FIA Act, 1974). Learned counsel also submitted that proceedings conducted by respondent No.1 to 3 are coram-non-judice and without authority. In support of his contentions learned counsel placed reliance on case titled Pakistan Engineering Company Limited Vs DG FIA (2011 YLR 337), The State Vs Muhammad Amin Haroon (2010 P.Cr.L.J 518) and Mian Hamza Shahbaz Sharif Vs F.O.P (1999 P.Cr.L.J 1584).

4. Learned D.A.G, interalia, submitted that accounts can be frozen by respondent No.2 under the FIA Act, 1974. It was also contended that respondents No.2 & 3 have the authority / power to investigate and enquire into offences as provided in the schedule to the Federal Investigation Agency, Act, 1974.

5. The preamble of Federal Investigation Agency Act, 1974 (The Act) provides as follows:-

"Whereas it is expedient to provide for a constitution of a Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government and for matters connected there with"

The Agency has been constituted under section 3 of the Act and has the power to enquire into and investigate the offences specified in the schedule. The question regarding the power and authority of the Agency i.e respondent No.2 came up for consideration before the Honourable Lahore High Court in case titled Shahbaz ud Din Chaudhry Vs The Director FIA (1992 YLR 678) and it was held that:-

If we examine the Federal Investigating Agency Act, 1974 (VIII of 1975)(came into effect in January, 1975) in the light of the foregoing rule, we note that it is a successor Act to Pakistan Special Police Establishment, Ordinance, 1948 (VIII of 1948) which Act was repealed by section 10 of the Federal Investigating Agency Act, 1974. The preamble of the Pakistan Special Police Establishment Ordinance, 1948 (VIII of 1948) stipulated the purpose of the Ordinance as, for the investigation of certain offences committed in connection with matters concerning the Central Government and to make provision for the powers, duties, privileges, liabilities, superintendence and administration of the said force. "Section 3 of the said Ordinance, mandated that the Central Government, "by Notification in the official gazette, specify the offences or classes of offences committed in connection with matters concerning the Central Government." This Ordinance did not contain any schedule. The major change which appears to have been brought by enacting FIA, Act, 1974 is the addition of a schedule which contains 131 Sections of Pakistan Penal Code and 38 Acts which cover offences having inter-Provincial ramifications, Anti-Smuggling, Immigration, Bank Frauds, Evasion of taxes, Currency Racketeering and Dangerous Drugs. On a query, the Court was informed that to achieve the purpose of the Act, the FIA has been divided into three wings which are:-- Crime Wing, (ii) Economic Crime Wing and (iii) Immigration and Anti-Smuggling Wing. The Crime Wing deals with offences like corruption, bribery and fraud cases. The Economic Crime Wing and Anti-Smuggling Wings deal with offences committed by the private companies, corporations and autonomous bodies of the Federal Government and has eleven check-posts throughout Pakistan. The Economic Wing also deals with commercial crimes, relatable to leakage of

Government revenues, the offences relatable to State Bank of Pakistan and the scheduled banks etc. The purpose of an Act cannot be discerned from mere recital of the preamble, the whole Act has to be read out to find out the legislative intent. A myopic interpretation of preamble of the Federal Investigating Agency Act, 1974 may suggest that this Act is relatable only to offences which are relatable to the Federal Government. Such a view completely ignores the import of section 3 of the Act and the schedule attached thereto. By addition of such a comprehensive schedule, the legislature wanted to remedy the mischief which was the rather narrow ambit of jurisdiction of the preceding Act. Full import of the Act therefore, cannot be comprehended unless the entire Act and particularly the schedule attached thereto is not understood in all its ramification. In "Maxwell on Interpretation of Statutes" Eleventh Edition by Roy Wilson, Q.C and Brain Galpin while commenting on the relevancy of preamble, for construction of a statute, refers at page 45 to Doe V. Branding (1828) 7 B & C.643, 660 per Lord Tenterden wherein it was observed as under:-

" The preamble is often no more than a recital of some of the inconvenience, and does not exclude any others for which a remedy is given by the statute. The evil recited is but the motive for legislation; the remedy may both consistently and wisely be extended beyond the cure of that evil, and if on a review of the whole Act, a wider intention than expresses in the preamble appears to be the real one, effect is to be given to it notwithstanding the less extensive import of the preamble.

The context of the preamble is not to influence the meaning otherwise ascribable to the enacting parts unless there is a compelling reason for it."

Similarly, the Honourable Lahore High Court in case titled Pakistan Engineering Company Limited Vs D.G FIA (2011 YLR 337) held as follows:-

So far as, legal questions are concerned, it would be advantageous to refer to some of the provisions of the FIA , Act, 1974 (hereinafter called the Act). The preamble of the Act reads as under:-

"Whereas it is expedient to provide for the constitution of a Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government, the matters connected therewith"

Section 2(c) of the Act reads as under:-

"Public Servant means a public servant as defined in section 21 of the Pakistan Penal Code (Act XLV of 1860), and includes an employee of any corporation or other body or organization set up, controlled or administered by (under the authority of) the Federal Government."

The perusal of the aforesaid provisions in juxta position shows that the object of the Act was to set up an Investigating Agency for the offences committed in

connection with matters concerning the Federal Government and matters connected therewith. Admittedly, the complaint lodged in the instant case has no nexus with the object cited above. Moreover, neither any employee of the Federal Government is involved nor the petitioner company is under the administrative and controlling of the Federal Government nor any loss has occurred to the Federal Government. Hence FIA has no authority and jurisdiction to take cognizance in this case. In this connection, a reference could be made to the judgements, reported in the cases of Iftikhar Hussain and others Vs Government of Pakistan and others (NLR 1996 AC 193), Zafar Iqbal and 3 others Vs Ghulam Abid and 2 others (1995 MLD 1285), Dr.Syed Rehmat Vs Deputy Director FIA (1999 P CrI.L.J 1549) and Printing Corporation of Pakistan Vs Province of Sindh and others (PLD 990 SC 452).

In case titled State Vs Muhammad Amin Haroon (2010 P.CrI.L.J 518) it was held that though the preamble is not an operative part of the Statute, but nevertheless it does provide a useful guide for finding out the intention of the Legislature and, therefore, cannot be ignored while interpreting the law. The Honourable Lahore High Court in case titled Mian Hamza Shehbaz Sharif Vs F.O.P (1999 P.CrI.L.J 1584) held that Federal

Investigation Agency can investigate only those cases which were given in the schedule attached to the Act and the same were alleged to have been committed either by a public servant as defined in Section 21 PPC or were allegedly committed in connection with matters pertaining to Federal Government or by employees of the Corporation setup, controlled and administered by Federal Government. Similar view was taken by the Honourable Lahore High Court in case titled Kamran Iqbal Vs DG FIA etc (PLD 2009 LHR 137).

6. In the instant case complaint against the petitioners was lodged by respondents No.4 & 5 who also claim to be the office bearer of Petitioner No.1 and on that basis have alleged that Petitioners No.2 & 3 are misusing the accounts of Petitioner No.1. Admittedly Petitioner No.1 is a non Government entity and has no direct or indirect control over it by the Federal Government. Similarly, its employees are not public servants as defined in Pakistan Penal Code. The controversy in hand is between the two sets of office bearers who claim to be the President and Secretary. Since the parameters for initiation of enquiry / investigation by respondents No.1 to 3 in the instant case are not met with, therefore, enquiry initiated by respondent No.2 & 3 is without jurisdiction and so is the act of freezing of the accounts. In case titled Adam G Insurance Company Vs Assistant Director Economic Enquiry Wing (1989 P.Cr.L.J 1921) the Honourable Sindh High Court held that writ jurisdiction can be invoked viz-a-viz notice for enquiry which was beyond the scope or power. Similarly an investigation which is beyond the jurisdiction is without lawful authority. Reliance is placed on case titled Muhammad Irshad Khan Vs Chairman NAB (2007 P.Cr.L.J

1957) and Chairman NAB etc Vs Muhammad Irshad Khan (2008 SCMR 1012).

7. The dispute in the present case between the parties is of nature in which FIA has no jurisdiction or authority.

8. For the foregoing reasons the instant petition is allowed and enquiry No.100/2015 alongwith all steps taken in pursuance thereof by respondents No.2 & 3 are declared to be without lawful authority and of no legal effect.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 14th day of January, 2016.

JUDGE

Approved For Reporting