

2011 M L D 1532

[Lahore]

Before Muhammad Ameer Bhatti, J

KHALID RASHID and 5 others---Petitioners

Versus

FEDERATION OF PAKISTAN through Secretary, Interior and another---Respondents

Writ Petition No.2037 of 2010, decided on 8th June, 2011.

Exit from Pakistan (Control) Ordinance (XLVI of 1981)---

---Si 3---Constitution of Pakistan, Arts. 4, 9 & 199---Constitutional petition---Placing name of petitioner on Exit Control List (ECL) due to investigation being conducted by Anti Corruption Establishment into allegations of massive corruption levelled against him---Validity---Placing of petitioner's name on ECL would amount to interference in his liberty and movement during pendency of such investigation, which was against fundamental rights as guaranteed by the Constitution---High Court directed authority to remove petitioner's name from ECL.

Mian Ayaz Anwar v. Federation of Pakistan through Secretary Interior and 3 others PLD 2010 Lah. 230 rel.

Agha Abut Hassan Arif for Petitioner.

Azar Deputy Attorney General.

Ms. Firdous Butt, A.A.-G. for Respondent.

ORDER

MUHAMMAD AMEER BHATTI, J.---Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged the letter dated 8-1-2010 issued by respondent No.1 through respondent No.2 to be declared illegal, void, without lawful authority and of no legal effect by setting aside the same with the direction that name of the petitioner be expunged from the impugned letter of ECL.

2. Pursuant to order dated 2-1-2010, the learned Deputy Attorney-General has not only submitted para wise comments on behalf of respondents Nos.1 and 2 but also appeared and assisted this Court.

3. I have gone through the para wise comments of the respondents Nos.1 and 2, the stand of the

respondents Nos.1 and 2 reflected in Para No.3 is as under:

"Name of Mr. Khalid Rasheed along with 72 individuals was placed on ECL on 8th January 2010 on the recommendations of Home Department, Punjab as Anti-Corruption Establishment Punjab is conducting into allegations of massive corruption of over Rs.1 crore and accumulation of assets beyond known sourced against them."

4. This Court in case Mian Ayaz Anwar v. Federation of Pakistan through Secretary Interior and 3 others reported as PLD 2010 Lahore 230, while interpreting Article 9 of the Constitution of Islamic Republic of Pakistan held as under:

"The jurisprudence discussed above establishes that right to travel is part of human liberty as travel signifies freedom and liberty. Therefore, the 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 our Constitution. Taking this further, there is little doubt in saying that the world today has shrunk due to online connectivity, internet, media and faster means of travel. People today travel across the globe to pursue higher education, to seek more challenging and rewarding employment, to carry out academic research or to discover and expand their business into new markets of the world. Travel, therefore, has become an integral part of modern life. Right to education, right to livelihood and right to carry out lawful profession are incomplete without having access and the right to travel to any part of the world and in particular to the educational or business centres of the world. To me right to travel, especially international travel, besides being right to liberty is also an integral part of right to life or right to a meaningful, challenging, satisfying and purposeful life. Therefore, I hold right to liberty. Right to life has already received a robust and a dynamic interpretation. I, with advantage, place reliance on Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry v. The President of Pakistan through the Secretary and others (PLD 2010 SC 61) where Khalil-ur-Rehman Ramday, J. observed. The above mentioned Article 9 of the Constitution guarantees protection of one's life. All the judges and jurists in different ages and from different jurisdictions have been one in saying that the word "LIFE" protected and assured by various constitutions could never be understood to have been used in a limited or restricted sense and therefore, did not mean just the vegetative and the animal life of a man or his mere existence from conception to death. This word had, in fact, to be understood in its widest and fullest context to include all such rights, amenities and facilities which were necessary and essential for the enjoyment of a free, proper, comfortable, clean and peaceful life. When confronted with concrete situations, it was held through various judgments from various countries that the right to live meant the right to live with dignity and honour and included rights such as the right to proper health care, the right to proper food and nutrition, the right to proper clothing, the right to education, the right to shelter, the right to earn one's livelihood and even a right to a clean atmosphere and an unpolluted environment. And in some other 'cases, the nuisance created by municipal swage, industrial effluents and the hazards caused by a magnetic field produced by high tension electricity wires, were found to be an interference with the enjoyment of one's right to life. In yet another case from Indian jurisdiction, even access to proper roads for people living in hilly areas was held to be

an essential part of the right to life. In more than one cases from our own jurisdiction, it was also. declared that since right to live in peace in a just and a fair environment was internet in the right to life, therefore, the right of access to justice was a well recognized and an inviolable Fundamental Right enshrined in Article 9 of the Constitution and its denial, an infringement of the said right. As a necessary consequence, it was further held that since access to justice was inconceivable and would be a mere farce and a mirage in the absence of an independent judiciary guaranteeing impartial, fair and a just adjudicatory mechanism, therefore, the demand for a judiciary which was free of executive influence and pressure; was not manipulatable and which was not a subservient judiciary, was also an integral part and an indispensable ingredient of the said Fundamental Right of access to justice."

5. While interpreting the Article 4 it was further held:--

"The right to life and liberty of a citizen can only be restricted or abridged if it is in accordance with law. Law, here means Law that caters to larger collective public interest. Therefore, the fundamental right of an individual guaranteed under the constitution can only surrender and succumb to a lawful collective interest of the community or the society. Public interest or collective community interest is a basket of various public interests including public morality, public order, public health, national security and foreign policy of the country besides fundamental rights of the others. Public interest is an essential ingredient of any law that proposes to take away, abridge or interfere with the fundamental rights of an individual."

6. Keeping in view the law laid down by the Hon'ble Supreme Court of Pakistan as well as this Court as mentioned above, placing of the petitioners name in the ECL amounts to interference in their liberty and movement, during the pendency of the investigation, which is against the fundamental rights as guaranteed by the Constitution of the Islamic Republic of Pakistan.

7. In this view of the matter, the constitutional petition in hand is allowed and the respondents are directed to remove the names of the petitioners from the ECL. With this observation, this petition stands disposed of.

S.A.K./K-35/L

Petition accepted.