

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Suo Motu Case No.5 of 2012

(Suo Motu Action regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar attempting to influence the judicial process)

On Court Notice:	Mr. Irfan Qadir, Attorney General for Pakistan
For Dr. Arsalan Iftikhar:	Sardar M. Ishaq Khan, Sr. ASC With Dr. Arsalan Iftikhar
For Malik Riaz Hussain:	Mr. Zahid Hussain Bokhari, ASC
For Bahria Town:	Dr. Amjad Hussain Bukhari, ASC Mr. Arshad Ali Chaudhry, AOR with Syed Shabbar Hussain, Company Secy.
On Court's call:	Mr. Mubassar Saddozai, Dir. (L), SECP Mr. Shaukat Hussain, AROC, SECP
Date of Hearing :	07.06.2012 (at 4 p.m.)

ORDER

Jawwad S. Khawaja, J. Suo Motu Notice was issued in this case for 6.6.2012.

The order passed yesterday i.e. 6.6.2012 and order passed earlier in the day today is on file. Hon'ble the Chief Justice was heading the Bench but has recused in the light of the order passed this morning.

2. Yesterday we received in Court a statement filed by Mr. Hamid Mir, Executive Editor of GEO TV. We have also received earlier in the day a statement submitted in Court by Mr. Kamran Khan who is Group Executive Director of GEO TV and lastly we have received from Mir Ibrahim Rehman, Chief Executive of GEO TV Network, a set of documents including an affidavit by Shaheen Sehbai, Group Editor, News International. Copies of these three statements have been furnished to learned counsel representing the parties and to the learned Attorney General.

3. These statements are a record of meetings and interactions between these three persons and one Malik Riaz Hussain. According to these reports, Malik Riaz

Hussain informed them that Dr. Arsalan Iftikhar had committed serious financial wrong-doing. The statements themselves are replete with references to the Chief Justice of this Court.

4. At the start of this hearing, the Company Secretary of Bahria Town (Pvt.) Ltd. namely, Mr. Shabbar Hussain was asked to provide some particulars as to the Company and its nexus with the Pak Bahria and with Malik Riaz Hussain. He stated that the Company was set up in 1997 on the basis of a joint venture between Bahria Foundation and the family of Malik Riaz Hussain. It is a bit unfortunate that although we waited all day yesterday from 9:30 a.m. to 1:30 p.m. for the Company Secretary to turn up with the record, this did not happen. The Company Secretary has today apologized for this. Since we do not wish to digress from the focus of these proceedings, we do not wish to comment further on the failure of the Company Secretary to arrive in the Supreme Court from Rawalpindi during the said time. He has stated that he was in a meeting and later there was rush of traffic. Let this rest for the time being. The Company Secretary, however, shall furnish in Court the joint venture agreement between Bahria Foundation and Malik Riaz Hussain. He shall also provide copies, if any, relating to the dissolution of the joint venture. During questioning he mentioned that there was some litigation pending in the Civil Court relating to the said joint venture. He shall furnish copies of the record of the said litigation also.

5. In addition to the above, the Company Secretary informed the Court that Malik Riaz Hussain officially has nothing whatsoever to do with Bahria Town (Pvt.) Ltd. because he does not own even a single share in the said Company and although he was the Chairman of the Company, he resigned from the said office last month. The Company Secretary also informed the Court that two private limited Companies namely, Safari Town Pvt. Ltd. which owned 999,000 ordinary shares of Bahria Town and Hussain Global Associates Pvt. Ltd. which owned 5,000,000 ordinary shares of Bahria Town, have transferred their share-holding in favour of the son and the wife of Malik Riaz Hussain namely Ahmed Ali Riaz Malik and Bina Riaz. As a

consequence, the present share-holding of Bahria Town is vested 26% in Ahmed Ali Riaz Malik and 74% in Bina Riaz.

6. Sardar Muhammad Ishaq Khan Sr. ASC representing Dr. Arsalan stated that learned counsel for Bahria Town and Malik Riaz respectively should be asked to provide the documents which have been mentioned in the statements of the three persons referred to above. The learned counsel representing Bahria Town has stated that he is in possession of only one document which is a return in form 29 submitted on behalf of Bahria Town to the Securities and Exchange Commission of Pakistan. We have already noted that the Company Secretary of Bahria Town shall provide the remaining record noted in the previous paragraphs.

7. Syed Zahid Hussain Bukhari has stated that he has had telephonic contact with his client Malik Riaz Hussain. He presently is not a position to state if any medical procedure will be advised by the medical consultants of Malik Riaz Hussain in England. He, however, also stated that he will make contact with his client to find out the true position. He requested the Court to adjourn the case for seven days so that he can obtain instructions/documents etc. for the assistance of the Court. We can understand the need felt by learned counsel to be in contact with his client. However, in this day of advanced communication technology, seven days may not be required. We, however, will allow reasonable time to enable counsel to be in touch with his client. Learned Sr. ASC representing Malik Riaz also stated that a larger Bench should be constituted for the hearing of this Suo Moto Case. He also made a few other suggestions as to the constitution and number of Judges on such Bench. He is free to move any application in this behalf to Hon'ble the Chief Justice.

8. The learned Attorney General apparently was of the view that there was nothing special about this case and Dr. Arsalan and Malik Riaz are just two individuals like any other individuals who appear in cases before this Court. He also contended that no allegation had been made to disparage the reputation of this Court. This statement was made by the learned Attorney General when he had not, as yet, had an opportunity of going through the statement made by the three individuals mentioned above. However, his contention is noted and it is also

observed that Suo Moto notice in the case was taken by Hon'ble the Chief Justice for valid reasons which have also been noted in the order passed yesterday and earlier in the day today.

9. The learned Attorney General also stated that the fundamental rights of the persons involved have to be kept in mind as also their right to fair trial. We do not intend to hold a trial because that would be a matter which, if necessary will be undertaken by a competent trial Court in accordance with law. For the present, the exercise being undertaken by us is to ensure that the truth relating to matters which have had wide, intensive and extensive publicity not only in Pakistan but the world over should be uncovered. This exercise is of the utmost significance because without this the legal, constitutional and moral authority of this Court can be adversely affected. The proceedings are to take place in open Court and the interest which has been evoked in these proceedings is manifest from the coverage received in the media and by heavy attendance in Court of persons from all walks of life. The learned Attorney General stated that he has the highest regard for the members of this Bench but would still request that in view of the extraordinary nature of the case a larger Bench be constituted. This submission is somewhat at odds with his earlier stance that this matter should be treated as any other ordinary case. However, the learned Attorney General is also free to move an application before Hon'ble the Chief Justice.

10. The learned Attorney General, if he so chooses and the learned counsel representing respectively Dr. Arsalan, Malik Riaz and Bahria Town shall file concise statements together with all relevant documents in their possession by Saturday i.e. 9.6.2012. The concise statements should be exchanged between the learned counsel before the next date of hearing i.e. 11.6.2012.

11. Since in the statements of the three media persons referred to above, there is also mention that rupees thirty to forty crores have been paid by or on behalf of Malik Riaz Hussain to Dr. Arsalan, it is necessary for us to get some information on the financial status of Malik Riaz. As we have already been informed that Malik Riaz has no nexus with Bahria Town Pvt. Ltd., the Chairman, FBR is directed to provide to us

the tax returns, wealth statements and other relevant documents which will show to us the net worth of Malik Riaz Hussain. Let this be done by tomorrow.

12. Ali Ahmad Riaz, Chief Executive, Bahria Town and Malik Riaz Hussain shall also appear in Court on the next date of hearing unless prevented by some unavoidable reason.

13. To come up on 11.6.2012.

Judge

Judge

ISLAMABAD

07.06.2012

M. Azhar Malik