

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Tariq Parvez
Mr. Justice Amir Hani Muslim

SUO MOTO CASE NO. 18 OF 2010

Suo Moto Action regarding violation of Public Procurement Rules, 2004 in procurement loss of billions of rupees to exchequer caused by National Insurance Company Ltd.)

In Contempt Proceedings:

On Court notice : Maulvi Anwar-ul-Haq, AGP.

For alleged Contemnor : Mr. Abdul Hafeez Pirzada, Sr. ASC.
Mian Gul Hassan Aurangzeb, ASC.
Mr. Mehr Khan Malik, AOR with
Malik Muhammad Iqbal DG FIA.

For M/o Interior : Mr. Qamar Zaman Ch. Secretary.

For Estt. Division : Mr. Abdul Rauf Ch. Secretary.

Date of hearing : 08.06.2011.

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. - Mr. Zafar Ahmed

Qureshi, started investigation of the financial scam of NICL while he was posted as Director F.I.A. He was supervising investigation successfully when he was abruptly transferred and posted as Managing Director of the National Police Foundation. Therefore, by order dated 24.1.2011 of this Court the Secretary Interior was directed to look into the matter as the case in which Mr. Zafar Ahmed Qureshi was supervising investigation pertained to plundering of huge public money. As a corollary of this order, notification dated 24.1.2011 was issued by the Government of Pakistan, Cabinet Secretariat, Establishment Division, notifying that Capt. (Retd.) Zafar Ahmed Qureshi

(PSP/BS-21), Managing Director, National Police Foundation is appointed Member of the FIA, under Ministry of Interior, for posting as Additional Director General, FIA, in addition to his present assignment, with immediate effect and until further orders to supervise the investigation of NICL case at Lahore.

2. On 15.4.2011, the D.G, FIA, wrote a letter to the Secretary, Ministry of Interior, in which he has stated that the supervising officer namely Mr. Zafar Ahmed Qureshi on 11.4.2011 has submitted interim challan in the Court of competent jurisdiction in the NICL case and on 14.4.2011 report has been submitted to this Court by him. On receipt of the letter dated 15.4.2011, of D.G, FIA, the Secretary, Ministry of Interior, claims to have passed it on to the Secretary Establishment Division by a covering letter. The Secretary, Establishment Division, present in Court, has stated in the Court that he received verbal orders of the Prime Minister through his Principal Secretary on 18.4.2011 at 10 or 11 p.m in the late evening pursuant to which he has issued the notification dated 18.4.2011. According to the Secretary, Establishment Division, he has sought confirmation of the oral orders of the Prime Minister by floating a summary on 20.4.2011 and the Principal Secretary to the Prime Minister has confirmed the oral orders of the Prime Minister.

3. By notification dated 18.4.2011, issued by the Cabinet Secretariat, Establishment Division, Mr. Zafar Ahmed Qureshi was disassociated from the supervision of investigation assigned by this Court, which reads as follows:-

“Capt. (Retd.) Zafar Ahmed Qureshi (PSP/BS-21), was posted as Additional Director General, Federation Investigation, under Ministry of Interior, in addition to his present assignment as Managing Director, National Police Foundation, to supervise the investigation of NICL case vide this Division’s Notification of even number dated 24.1.2001.

2. *The Director General, Federal Investigation Agency has intimated that the recoveries have been made and the Challan*

submitted in the said case. Therefore, the additional charge of the officer as Additional Director General, Federal Investigation Agency is hereby withdrawn with immediate effect.”

This Court in its order dated 10.5.2011 has held as under:-

“Therefore, we are of the opinion that Malik Muhammad Iqbal, D.G, FIA, by sending a letter dated 15.4.2011, reproduced herein above, has created obstacles in investigation of the case which was being conducted by Mr. Zafar Ahmad Qureshi in pursuance of directions of this Court and in this manner he has disturbed, disobeyed and disregarded the order/direction of this Court, although has interfered with the process of law and due course of judicial proceedings by getting the Additional D.G., FIA, disassociated from the investigation as stated hereinabove.”

4. Therefore, this Court issued show cause notice dated 11.5.2011 to the Director General, FIA, Malik Muhammad Iqbal, under Article 204 of the Constitution read with Sections 4 and 5 of the Contempt of Court Ordinance (Ordinance V) of 2003, to explain as to why he should not be proceeded against for the violative acts, which reads as under:-

“Be that as it may, in these compelling circumstances, we issue show cause notice of contempt of Court to Malik Muhammad Iqbal, D.G, FIA under Article 204 of the Constitution read with 3 & 5 of the Contempt of Court Ordinance (Ordinance V) of 2003 to explain as to why he should not be proceeded against for the violative acts detailed hereinabove interfering in the affairs of this Court by approaching the government authorities for the purpose of getting notification dated 18.4.2011 issued on the basis of which an officer taking deep interest recovering a huge amount of the Government, has been disassociated from the investigation. He should submit the reply on or before the next date of hearing. Adjourned to 16.5.2011.”

5. Malik Muhammad Iqbal, D.G, FIA, filed his explanation to the show cause notice vide C.M.No.1836 of 2011. In the reply to the show cause notice, the D.G, FIA, has stated as under:-

- “5. *It is most respectfully submitted that this letter was not written either to procure or seek the transfer of Capt ® Zafar Ahmed Qureshi or to have him relieved of the additional charge as Additional Director General Federal Investigation Agency.*
6. *It may further be stated that in the said letter all that was stated merely by way of information was, “that the interim challans in NICL cases have been submitted in the Court of competent jurisdiction on 11.4.2011 and a report thereof has already been submitted in the Hon’ble Supreme Court of Pakistan on 14.4.2011 by the said officer.” This was a mere narration of facts. No request was made in this letter or otherwise by me to have Mr. Qureshi relieved of his duties as an Additional Director of the Federal Investigation Agency investigation the NICL cases.*
7. *That on receipt of this letter the Additional Secretary, Ministry of Interior by his letter of 16th April, 2011, informed the Establishment Division about the receipt of this letter and, to the best of my understanding regarded it simply as a communication “regarding the latest position of investigation in NICL case at Lahore”. A copy of this letter is ANNEX”B”.*
8. *That in its notification of 18 April 2011, ANNEX “C”, the Establishment Division, Cabinet Secretariat, Government of Pakistan observed that I have “intimated that the recoveries have been made and the Challan submitted in the said case.” The Establishment Division, according to it, therefore, “withdrew the additional charge of the officer as Additional Director General, Federal Investigation Agency....”*
9. *That it is most respectfully submitted that there is a significant difference between a “Challan” and an “Interim Challan”. The former expression may mean a final challan but the latter expression does not. It is also clear that while an investigation may come to an end on the submission of a final challan it does not terminate on the submission of an interim challan. I had, therefore, used the cautious and correct latter expression in my letter of 15th April, 2011, and had not used the former expression. It is*

submitted that the Establishment Division has incorrectly attributed the use of the expression “Challan’ to me. I never used this word.

10. *it is also humbly and most respectfully stated that I had not used the words, “recoveries have been made: in my letter of 15 April, 2011. Even a cursory glance at my letter of 15 April, 2011 will make it abundantly clear that I had not used these or even any similar words. These words have been incorrectly attributed to me by the Establishment Division, for reasons best known to it.*
11. *I also voluntarily state that I had not used these words in any other communication, either verbal or written, in respect of this matter. Being a senior officer and being fully conscious of the sensitivities of this case I could not have dared use such loose and incorrect expressions.*
12. *On 29 April, 2011, well before the order passed by this Hon’ble Court on 10 May 2011, I wrote to the Secretary, Ministry of Interior specifically requesting that the notification in question may be withdrawn and the earlier notification of 24 January, 2011 be restored, “so that Mr. Zafar Ahmed Qureshi may complete the investigation as Member of FIA by adjusting him against the post of Additional Director General FIA in addition to his present assignment.”*
13. *That on 5 May, 2011 in its letter, ANNEX “D: addressed to the Secretary, Establishment, the Ministry of Interior endorsed my request and attached another copy of it with this letter*
14. *On 10 May, 2011, I clarified my position through letter, ANNEX “E”. In this letter I repeated my request of 29 April, 2011. No action was taken, however.”*

6. He, however, in his explanation tendered unconditional apology as well. The reply was considered by this Court which was not found satisfactory and by order dated 3.6.3011, the Court framed the following charge:-

“That you by committing the aforesaid act have created obstacles in investigation of the case which was being conducted by Zafar

Ahmad Qureshi pursuant to directions of Supreme Court of Pakistan and have thus disobeyed and disregarded the order/direction of the Court and has interfered with the process of law and due course of judicial proceedings and thus committed contempt as defined in Section 3 of the Contempt of Court Ordinance, 2003 punishable under Section 5(1) thereof.”

7. Copy of the charge was supplied to the D.G, FIA, Malik Muhammad Iqbal, on 3.6.2011, who on the same day, pleaded as under:-

“Respectfully submitted that the undersigned holds the apex court in the highest esteem and respect. I do not want to contest the charge. However, most respectfully I submit that it was not my intention or object to undermine the authority of this Honourable Court and subvert its orders/directions. I stand by my earlier statement dated 14.5.2011 submitted through my counsel Mr. Makhdoom Ali Khan. I humbly and respectfully seek mercy and clemency of the August Court and by way of extenuating circumstance I submit that I am superannuating on 14.7.2011 and I shall immediately proceed on leave and not serve.

Respectfully submitted”

8. We have examined the available record, which includes letter of D.G, FIA, dated 15.4.2011, subject of which has been mentioned as notification, letter dated 16.4.2011 of the Additional Secretary, Ministry of Interior, addressed to the Secretary, Establishment Division, Notification dated 18.4.2011, by which Mr. Zafar Ahmed Qureshi, who was assigned duty to supervise the investigation of NICL scam at Lahore, was disassociated from the said investigation on 18.4.2011 by a notification issued by the Cabinet Secretariat, Establishment Division referred to hereinabove by withdrawing the earlier notification dated 24.1.2011, issued by the same Division and copy of the summary of the Secretary, Establishment Division dated 20.4.2011 with confirmation by Principal Secretary to the Prime Minister.

9. We have heard the Attorney General for Pakistan and the learned counsel for the Secretaries. We have also heard the D.G, FIA, the Secretary, Ministry of Interior and the Secretary, Establishment Division. We have noticed that the stand taken by the

Secretary, Ministry of Interior and the Secretary, Establishment Division in the Court was unusual. We have sought explanation from the Secretary, Ministry of Interior, as to the need of transmitting the routine letter of D.G, FIA, to the Secretary, Establishment Division. He could not offer any plausible explanation. We have also inquired from the Secretary, Establishment Division as to why he has not brought to the notice of the competent authority before issuing notification of 18.4.2011 in haste on verbal direction regarding the orders of this Court for Mr. Zafar Ahmed Qureshi. The Secretary, Establishment Division, did not offer any explanation.

10. The fact that the D.G, FIA, has verbally intimated the Secretary, Establishment Division about the recoveries and submission of challan, which is made basis for issuance of notification dated 18.4.2011, is not documented in any paper except in the summary of 20.4.2011, for which neither the Secretary, Ministry of Interior nor the Secretary, Establishment Division, could offer any explanation in Court. This verbal communication has been denied by the D.G, FIA in his reply to the show cause notice. The stand taken by these two senior officers is completely in conflict with the contents of para 2 of the notification dated 18.4.2011. The summary floated for confirmation by the Secretary, Establishment Division, on 20.4.2011, neither mentions the verbal orders nor reasons for withdrawal of notification of additional charge of Mr. Zafar Ahmed Qureshi. The contents of the summary floated by the Secretary, Establishment Division on 20.4.2011, appears to be after thought and is an attempt to justify issuance of notification dated 18.4.2011. The notification dated 18.4.2011, prima facie, was issued on the basis of the letter of D.G, FIA, prima facie, in order to create a ground for disassociating Zafar Ahmed Qureshi from supervision of investigation the D.G., FIA, Secretary Interior, Secretary, Establishment, and Principal Secretary to the Prime Minister have joined hands together to create obstacle in smooth and honest investigation in the case in defiance of the orders of this Court.

11. In the given circumstances, when notification dated 18.4.2011 has been issued in violation of the provisions of Rules of Business, 1973, read with Secretariat

Instructions, prima facie, and the letters and actions of D.G, FIA, Secretary, Ministry of Interior, Secretary Establishment Division, and Khushnood Lashari Principal Secretary to the prime Minister, were instrumental in willful defiance of orders of this Court passed on 24.1.2011, and all of them, ex facie, are responsible in interfering and obstructing the investigation process in the above terms.

12. In order to meet the ends of justice, we find it necessary to issue notices under Section 17 (1) of the Contempt of Court (Ordinance V) of 2003, to Qamar Zaman Ch, Secretary, Ministry of Interior, Abdul Rauf Ch. Secretary, Establishment Division, and Khushnood Lashari, Principal Secretary to the Prime Minister, for willful defiance of the orders of this Court passed on 24.1.2011, by withdrawing notification dated 18.4.2011, which has hampered the smooth investigation in the case involving huge amounts of public money, who may file their replies and matter be fixed in Court on 23.6.2011. The judgment reserved in the case of Malik Muhammad Iqbal, D.G, FIA would be announced after hearing the above officials.

CJ

J

J

Approved for reporting.

Sohail/**

Announced in open Court on _____.

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