

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –3735 of 2020

Malik Abid Hussain

Versus

Federation of Pakistan and 2 others

[For hearing of CMA No.1127/2021 (Contempt)]

Constitutional Petition No. D –3736 of 2020

Noman Lodhi

Versus

Federation of Pakistan and 2 others

[For hearing of CMA No.1130/2021 (Contempt)]

Constitutional Petition No. D –3969 of 2020

Zain Suhail

Versus

Federation of Pakistan and 2 others

[For hearing of CMA No.1133/2021 (Contempt)]

Constitutional Petition No. D –4327 of 2020

Mehtab Tahir Niazi

Versus

Federation of Pakistan and 2 others

[For hearing of CMA No.28279/2020 (Contempt)]

For hearing of CMA No.1136/2021 (Contempt)]

Dates of hearing : 02.02.2021, 10.03.2021 & 11.03.2021

Date of order : 15.03.2021

Mr. Muhammad Ali Lakhani and Mr. Mujtaba Sohail Raja, advocates for the petitioners.

Ms. Ayesha Warsi, advocate along with Ms. Amna Warsi, advocate for CAA.

Mr. Haider Ali, Law Office of CAA.

Mr. Jawad A. Sarwana, advocate for respondent No.3 in C.P. No.D-4327/2020.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

Through the listed applications, the Applicants have prayed that contempt of court proceedings may be initiated against the alleged contemnors for their willful defiance of orders dated 17.8.2020, 25.08.2020, 14.09.2020 & 04.11.2020 passed by this court in the aforesaid proceedings.

2. Compliance report submitted by the alleged contemnor namely Hassan Nasir Jami has been objected to by the applicants on the ground that the appellate orders dated 25.11.2020 were/are Corum non-judice as the alleged contemnor was not the competent authority under the CAA Rules which provide that the Director-General, Civil Aviation Authority (`CAA`) was the authority in the case of the applicant's case. Learned counsel for the applicants, comprehensively presented the case of applicants by referring to various documents attached with the memo of Petitions as well as order passed by the learned Bench of Islamabad High Court; and, argued that the impugned appellate orders dated 25.11.2020 was/is illegal and of no effect because it was issued without lawful authority; that the appellate orders indicate that the competent authority failed to apply its mind independently on the facts of each appeal of the applicants. He further argued that the allegations leveled against the applicants could not be established with particularity as such the impugned appellate orders were/are not sustainable in law and of no legal effect. Learned counsel referred to the various provision of CAA Rules and Regulations and argued that action was taken against the applicants without recourse to the lawful procedure as provided under the CAA Rules and Regulations as amended up to date. He emphasized that this act on the part of the alleged contemnor namely Hassan Nasir Jami (Ex-DG CAA) was not only illegal but highly immoral and reprehensible since the Federal Government and its functionaries are supposed to protect the life, liberty, and property of the citizens under the law. He next submitted that this Court could enforce its orders in letter and spirit. He argued that this Court is empowered under its inherent jurisdiction to bring back the party to a position where it originally stood before the passing of an illegal order. The exercise of this inherent power is based on the principle that no party could be allowed to take advantage of his wrong, hence, prayed for drastic action against the alleged contemnors and for setting aside the impugned appellate orders passed by Hassan Nasir Jami, Director General, Pakistan Civil Aviation Authority.

3. Conversely, learned counsel representing respondent No.2/alleged contemnors argued that the orders passed by this Court in the aforesaid proceedings have been fully complied with in their letter and spirit and there is nothing left to be complied with on their part. Per learned counsel that the applicants were given a meaningful hearing and passed speaking orders. In support of her contention, she relied upon numerous documents and the replies filed on behalf of alleged contemnors and argued that respondents have acted strictly under the law; and, more particularly, in compliance with the order passed by the honorable Supreme Court on the subject issue. She prayed for dismissal of the listed contempt applications in the larger interest of justice.

4. We have heard the learned counsel for the parties on the listed applications viz. CMA No.1127/2021, CMA No.1130/2021, CMA No.1133/2021, CMA No. 28279/2020, and CMA No.1136/2021 and perused the compliance reports placed on record.

5. During the arguments, learned counsel for the respondent-CAA has referred to the order dated 21.7.2020 passed by the Hon'ble Supreme Court of Pakistan in Suo Motu Case No.1/2020 whereby the Hon'ble Supreme Court passed the following order:

"9. We find that the CAA has been in a state of disarray. Its computers had reportedly been hacked and some of the employees had been compromised. There were no systems in place to ensure security of records about the regulatory work conducted by the CAA. The DG, CAA is directed to take immediate and effective remedial measures and show results on ground regarding immediate streamlining the affairs of CAA, more particularly, with regard to issuance of suspect Pilot licenses. The Authority is directed to deal with the Pilots whose licenses, educational testimonials or other documents are suspect, in accordance with law. The CAA shall also deal with its own employees and take stern action against all those found involved in violation of or deviation from the rules and procedures and bring them to book. The actions that the CAA will take shall not only be of departmental nature but criminal cases shall also be registered against persons who committed illegal or wrongful acts in CAA. A report regarding remedial steps and actions shall be filed with this Court before the next date of hearing.

10. Reports submitted on behalf of PIA and other airlines also do not give the real picture of the state of affairs of the respective airlines. The CEO of PIA states that he is taking action against the delinquent employees, including pilots possessing fake flying licenses. We expect that he shall do his homework and remove such employees, who are the cause of serious damage to the national airline. He shall file a comprehensive report in this regard within two weeks. We have also been

informed that he had taken action against some pilots based on possession of fake licenses and educational testimonials and some other staff was also proceeded against but such proceedings have been restrained by the High Court of Sindh. He maintains that on account of interim orders, his efforts to purge the airline have suffered a serious setback. Let the CEO file a complete list of such cases along with necessary details of the proceedings pending in different Courts.

11. At this stage, Mr. Makhdoom Ali Khan, learned Senior ASC has approached the rostrum and submitted that the Pilots and other Crew members against whom there are allegations of holding fake licenses and academic testimonials are not being treated in accordance with law by the PIA as well as CAA. He prays that this Court may pass appropriate orders in this regard giving a timeframe within which proceeding should be completed. We however notice that the competent authorities have initiated proceedings and in most cases no final orders have so far been passed. We have taken up the matter as a larger national issue and are not at this stage inclined to interfere or micromanage the same and look into individual grievances. Such interference hampers and stalls the entire process. We would let the department proceedings be completed in due course without judicial interference. AS and when final orders are passed, the aggrieved parties shall have the right to avail such remedies as are provided by the relevant laws before the appropriate fora.

12. Learned Advocate General for Sindh and Balochistan state that they have not been able to file the requisite reports. Therefore, they seek some time to file the same. Let the same be filed within a period of two weeks.

13. Adjourned to a date in office.”(Emphasis Added)

6. This Court has been apprised of the fact that the respondent-CAA has constituted Board of Review under Civil Aviation Rules, 1994. We expect that the applicants shall be provided a meaningful hearing by the Board of Review so far as their grievances are concerned. At this stage, learned counsel for the applicant namely Malik Abid Hussain has doubted the Forensic Analysis Report and argued that the petitioner had qualified such examination as required under the law, therefore, reliance could not be placed on such report. Be that as it may, firstly, these intricate questions of fact could not be dilated upon in a disposed of the matter. Secondly, it is for the Board of Review to consider the stance of the petitioner as well as the Forensic Analysis Report strictly under CAA Rules and Regulations as amended up-to-date.

7. The learned counsel representing PIA in C.P. No.D-4327/2020 states that the orders passed by this Court have been fully complied with and the requisite amount of salary of the petitioner has been deposited with the Nazir of this Court subject to the outcome of the proceedings.

8. The respondent-CAA was directed to decide Applicants/Petitioners Appeals under the law, which compliance report has now been submitted. Therefore, we hereby opine that primarily substantial compliance of the orders passed by this Court has been made and the reasons assigned in the aforesaid appellate orders could not be dilated upon in contempt proceedings.

9. In so far as the question of not considering the appeal of the petitioners is concerned, the same could not be decided in contempt proceedings initiated in a disposed of the matter. The said question gives rise to a separate cause of action and it is for the aggrieved parties to avail remedy as provided under the law.

10. In view of the above we hereby hold that these applications are not maintainable and without our interference, let the respondent-CAA complete the department proceedings in due course as directed by the Honorable Supreme Court vide order dated 21.7.2020 passed in Suo Moto Case No.1/2020. Even otherwise, the appellate orders as discussed supra are part of disciplinary proceedings, which explicitly show the reasons for such action against the applicants/beneficiaries.

11. The Applicants attempted to convince this court to set aside the appellate orders of respondent-CAA by filling the instant applications on the grounds as discussed in the preceding paragraphs. Prima facie, the grounds agitated by the applicants could be looked into by the Review Board constituted in this regard.

12. Accordingly, the listed applications are dismissed with no order as to costs. However, in case petitioners approach the Review Board /Appellate Forum, it shall probe each issue of the petitioners thoroughly, including the issue of Forensic Analysis (in the relevant case) by passing a speaking order after granting an opportunity of hearing to the petitioners strictly under law and dicta laid down by the Honorable Supreme Court on the subject within a reasonable time.

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