

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 1782 of 2013

Date	Order with signature of the Judge
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For Katcha Peshi :

Date of hearing : 11.09.2013.

Petitioner : Farhan Saeed through
M/S Salahuddin Ghandapur and Sabir Shah,
Advocates.

Respondent : Federation of Pakistan and 5 others through
Mrs. Shiraz Iqbal Chaudhry, Standing Counsel.

ORDER

NADEEM AKHTAR, J. – Through this petition, the petitioner has impugned Memorandum No.12/4/2013-ECL dated 19.03.2013 issued by the Section Officer (ECL), Ministry of Interior, Government of Pakistan, the present respondents 1 and 2, whereby the name of the petitioner was placed on the Exit Control List (ECL) under Section 2 of the Exit from Pakistan (Control) Ordinance, 1981.

2. On 22.08.2013 when this matter came up before the Court, the learned DAG himself pointed out that the impugned Memorandum does not disclose any reason for placing the petitioner's name on ECL. The said statement of the learned DAG was recorded by the Court on 22.08.2013. In view of the said statement of the learned DAG, and also as the Secretary Interior had not responded to the notices issued by this Court, notice was ordered to be issued to him to show cause as to why cost in the sum of not less than Rs.50,000/= be not imposed upon him for insubordination of the Court's orders and failure in discharging his functions properly. Today, Mrs. Shiraz Iqbal Chaudhry, the learned Standing Counsel, has placed on record copy of letter dated 09.09.2013 issued by the Deputy Attorney General's Office to the Secretary, Ministry of Interior, Government of Pakistan, informing him about the aforementioned order passed by this Court on 22.08.2013. She submits that the said letter was faxed to the Secretary, and the 'sending report' of the fax has also been placed on record by her. Despite the above observations, directions and orders by this Court, nothing has been placed on record by the respondents to substantiate that there existed any valid or justiciable ground for placing the name of the petitioner on ECL.

3. Regarding the placement of the name of the petitioner on the ECL and prohibiting him from travelling abroad, we would like to observe that the Superior Courts, including the Hon'ble Supreme Court, have time and again disapproved such actions in strong words, and have held *inter alia* that such actions are violative of the fundamental rights of the citizens guaranteed by the Constitution ; a discretion vested in a public authority must be exercised fairly, reasonably and in good faith ; when no grounds were given, such an order shall not be a proper order ; when the criteria drawn for placing the name of a citizen of Pakistan on ECL has not been met, the placement of his name on ECL is *prima facie* unjustified and amounts to denial of his fundamental right guaranteed under Article 15 of the Constitution ; the Federal Government was legally bound to place on record material that prompted it to place the name on the ECL in order to satisfy the Court, and to show that such exercise was not colourful ; the right of a citizen to travel abroad is a fundamental right and an intrinsic part of the right to liberty guaranteed by Articles 2-A, 4, 9, 15, 19 and 25 of the Constitution ; the Federal Government was under legal obligation to have at least shown the basis of its intention of exercising power under Section 2(3) of the Exit from Pakistan (Control) Ordinance, 1981 ; Section 2 of the Exit from Pakistan (Control) Ordinance, 1981, does not provide any guidelines or reasonable classification for taking the action against a person prohibiting him from travelling abroad ; and, while issuing an order under Section 2 of the Exit from Pakistan (Control) Ordinance, 1981, the Federal Government has to apply it's own mind, the exercise must not be mechanical in nature, and must not be carried out on the mere request of an agency / authority.

4. The above views expressed by us are fortified by (1) *Government of Pakistan V/S Dada Amir Haider Khan, PLD 1987 SC 504*, (2) *Habibullah Niaz V/S Federation of Pakistan through Federal Secretary, Ministry of Interior, and 2 others, PLD 2009 Karachi 243*, (3) *Mir Khalid Langov V/S Secretary, Ministry of Interior, Government of Pakistan, Islamabad, PLD 2007 Quetta 41*, (4) *Wajid Shamas-ul-Hassan V/S Federation of Pakistan, PLD 1997 Lahore 617 at 630*, (5) *Mian Ayaz Anwar V/S Federation of Pakistan, PLD 2010 Lahore 230*, and, (6) *Rafi Ahmed and another V/S Special Judge, Central, Lahore, and another, PLD 2010 Lahore 693*.

5. It may be observed that it has been ordered in a number of cases by this Court, and even by the Hon'ble Supreme Court, that the Ministry of Interior and / or Immigration Authorities cannot place the name of a person on ECL and cannot restrict the freedom of his movement in a mechanical manner without applying their mind and without assigning any reason. The facts of this case and the admitted position discussed above are sufficient to establish that the name of the petitioner was placed on the ECL by the Ministry of Interior in an arbitrary and purely mechanical manner, without applying its own mind, without passing any

speaking order, and without disclosing the basis of its intention of exercising power under Section 2(3) of the Exit from Pakistan (Control) Ordinance, 1981. Such action on the part of the Ministry of Interior, which was not done fairly, reasonably or in good faith, indeed violated the valuable fundamental rights of the petitioner guaranteed under Articles 4, 9 and 15 of the Constitution. The actions on the part of the respondents in placing the name of the petitioner on the ECL, are, therefore, declared as arbitrary, *void ab initio* and without jurisdiction.

6. In an unreported recent case ; namely, Wasatullah Jaffery V/S Ministry of Interior and others, **C.P. No. D-3608/2011**, decided by this Court on 27.05.2013, cost of Rs.100,000/= was imposed on the Ministry of Interior through its Secretary, as the said respondent No.1, despite several chances, had failed to place on record any material to justify the placement of the name of the petitioner in the said petition on ECL.

7. As the Secretary, Ministry of Interior, Government of Pakistan, has not bothered to respond to the letter issued to him by the Deputy Attorney General's Office, and as it was already observed on 22.08.2013 by the Court that this petition will be considered and cost will be imposed on the said Secretary in case no response is received from him, this petition is allowed as prayed with costs of Rs.50,000/- to be recovered from the personal account of the Secretary, Ministry of Interior, Government of Pakistan, and paid to the petitioner within thirty (30) days. This is without prejudice to the right of the petitioner to claim damages against the respondents, but subject to law. The respondents are directed to remove the name of the Petitioner from Exit Control List forthwith.

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