

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Constitution Petition No. D-1230 of 2023**

*(Ashique Ali Chijjan Vs. Federation of Pakistan & others)*

**Constitution Petition No. D-1660 of 2023**

*(Ashique Ali Chijjan Vs. Federation of Pakistan & others)*

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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**Before;**

***Adnan-ul-Karim Memon, J;***  
***Mohammad Abdur Rahman, J;***

**Date of Hearing : 23 April 2024.**  
**Date of Order : 30 May 2024**

Mr. Shabbir Ali Bozdar, Advocate for the Petitioner.  
Mr. Muhammad Aslam Jatoi, Assistant Attorney General.  
Mr. Zulfiquar Ali Naich, Assistant Advocate General.

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**ORDER.**

**MOHAMAMD ABDUR RAHMAN J;-** The Petitioner has maintained these two Petitions, each under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the removal of his name from the Exit Control List (hereinafter referred to as the “ECL”), the Passport Control List (hereinafter referred to as the “PCL”) and also seeking his Passport from being unblocked by the Respondents.

2. The Petitioner contends that he was falsely implicated in two criminal cases bearing FIR NO. 211 of 2018 and FIR No. 16 of 2019 each registered with PS Ubauro, District Ghotki. The Petitioner was released from custody on 6 January 2021 but since that date is being restrained from travelling outside of Paksitan as his name has been placed on the ECL , the PCL and his Passport has also been blocked by the Respondents. He has maintained two petitions, each under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking the following relief:

(i) **C.P. No. D-1230 of 2023**

In this Petition, the Petitioner impugns the placing of his name on Exit Control List (ECL) by the Ministry of Interior, Government of Pakistan, under section 2 of the Exit from Pakistan (Control) Ordinance, 1981 (hereinafter referred to as the Ordinance, 1981)

(ii) **C.P. No. D-1660 of 2023**

In this Petition, the Petitioner seeks to review the recommendations of Senior Superintendent of Police Ghotki (SSP) vide letter dated 26 December 2018 owing to his alleged involvement in the F.I.R No. 211 of 2018 of Police Station Ubaro District Ghotki (hereinafter referred to as the "Criminal Proceedings") registered for offenses under section 302, 114, 148, 149 PPC and prays for the removal of his name from the Passport Control List (hereinafter referred to as the "PCL") and for directions that his Passport, which has been blocked by the Respondents, to be unblocked.

3. Mr. Shabbir Ali Bozdar appeared on behalf of the Petitioner and contended that he had been falsely implicated and that the Petitioner's name was recommended to be placed on the ECL on the direction of the Senior Superintendent of Police, Ghotki. It was contended on behalf of the Petitioner that placement of his name on ECL by the Government of Pakistan under the direction of Senior Superintendent of Police, Ghotki is arbitrary as no valid reason, per se, was given for taking such an action as against the Petitioner. It was contended that the action was mala fide as no show cause notice was issued to the Petitioner nor was any memorandum served on the Petitioner and hence the placement of his name on the ECL was in violation of Rule 3 of the Exit from Pakistan (Control) Rules, 2010 (hereinafter referred to as the "Rules, 2010"). In addition it was contended that the Petitioner was not the main accused in the subject crime and as such placement of his name on the ECL was in gross violation of Clause (e) of Rule 2 of the Rules, 2010.

4. Mr. Shabbir Ali Bozdar has also contended that the Petitioner has, primarily due to the absence of the complainant and his witnesses from deposing in the Criminal Proceedings, succeeded in obtaining bail. He contended that by including his name on the ECL, PCL and by blocking his passport his fundamental rights guaranteed under Articles 4, 8, 9, 10A, 15,

and 25 of the Constitution of the Islamic Republic of Pakistan Pakistan, 1973 have been violated.

5. The learned Assistant Attorney General has argued that the name of the Petitioner has correctly been placed on the ECL and the PCL and his passport has been correctly been blocked on account of his being nominated as an accused in the Criminal Proceedings. He referred to clause (b) of Sub-Rule (1) of Rule 22 of the Passport Rules, 2021 (hereinafter referred to as the "Rules, 2021") whereunder names of persons who have been refused passports under the said rules for other than anti-state activities specified in clause (a) may be placed in the PCL on the recommendation of government agencies or departments. He also relied upon clause (m) of Rule 2 of the Rules, 2021 whereunder the passport of a citizen may be blocked who is suspected of being, inter alia, involved in criminal cases. He submitted that as there is an FIR registered against the the Petitioner under Section 302 of the Pakistan Penal Code, 1860, if his name is removed from the ECL, PCL and his Passport is unblocked, there is every chance that the Petitioner would abscond and which would frustrate the Criminal Proceedings. In this regard he relied on a report submitted on behalf of the Respondents No.1 to 3 which confirms that the Petitioner's name was placed on the PCL on the recommendations of Senior Superintendent of Police, Ghotki by a letter dated 26 December 2018 and wherein it was requested that the name of the Petitioner should be placed on the PCL "as the Petitioner had been nominated in F.I.R No. 211 of 2018 of Police Station Ubaro District Ghotki".

6. We have heard the arguments advanced by the learned counsel for the parties and have examined the record with their assistance.

**A. Article 9 and 15 of the Constitution of the Islamic Republic of Pakistan, 1973.**

**(i) Article 15 of the Constitution of the Islamic Republic of Paksitan, 1973**

7. Article 15 of the Constitution of the Islamic Republic of Pakistan, 1973 guarantees that:

" ... 15. Freedom of movement, etc.

15. Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof."

The language of Article 15 of the Constitution of the Islamic Republic of Pakistan, 1973 guarantees the right of every citizen of Pakistan to remain in Pakistan. In addition to the right to remain in Pakistan, the Article confers a right, subject to any “reasonable” restriction that is made by a “law” in the “public interest” to “enter and move freely throughout Pakistan” and also to either “reside or settle in any part of Pakistan”. While such assurances in the form of a fundamental right have been conferred by the Constitution guaranteeing the right to remain and move freely throughout Pakistan, on a literal reading of the Article, no right seems to have been granted by that Article of the Constitution conferring on a citizen of Pakistan to leave the jurisdiction of Pakistan. Such an interpretation has also been cast on this Article by the Supreme Court of Pakistan in the decision reported as **Mian Muhammad Shahbaz Sharif vs. Federation of Pakistan Through Secretary Ministry of Interior, Government of Pakistan and others**<sup>1</sup> wherein it was held that:

“ ... It is not denied by learned Attorney-General for Pakistan and Advocate-General Punjab not so could be denied that Article 15 of the Constitution bestows a right on every citizen of Pakistan to enter or move freely throughout the country and to reside and settle in any part thereof. It is a settled proposition of law that the right to enter in the country cannot be denied but a citizen can be restrained from going out of the country.”

8. The above judgment of the Supreme Court of Pakistan runs contrary to the following judgments of the Supreme Court of Pakistan wherein it has been held that the right to leave the country is also a fundamental right guaranteed under Article 15 of the Constitution:

(i) **Pakistan Muslim League (N) Through Khawaja Muhammad Asif, M.N.A. And Others vs. Federation Of Pakistan Through Secretary Ministry Of Interior**<sup>2</sup> wherein it was held that:

“ ... 24. Be as it may it may, the petitioners being citizens of Pakistan can return to their country as no restraint can be placed on a Pakistani citizen to return to his country and the undertaking given petitioners had no Constitutional legitimacy as such the petitioners cannot be prohibited from coming to Pakistan. Every citizen has undeniable right vested in him as conferred under Article 15 of the Constitution to go abroad and return back to Pakistan without any hindrance and restraint but it must be kept in view that it is neither absolute nor unqualified as is indicative from the language employed in Article 15 of the Constitution as a specific mention is made

<sup>1</sup> PLD 2004 SC 583; See also **Abdul Rauf Malik vs. Government of Pakistan** PLD 1978 Lahore 410

<sup>2</sup> PLD 2007 SC 642

"subject to any reasonable restriction imposed by law in the public interest", meaning thereby that such right is subject to the relevant law which is in existence at relevant time..."

(ii) **Messrs United Bank Ltd. vs. Federation of Pakistan and others**<sup>3</sup> wherein it was held that:

" ... 8. ... Perusal of impugned judgment reveals that the learned Lahore High Court has noted not only this Point but has also observed that the claim against the respondent No. 3 by a commercial bank is yet to be adjudicated and this cannot be a ground to place the name of the respondent No. 3 on the exit control list to deprive him from his fundamental right of travel abroad or restrict his right of free movement."

(iii) **Federation of Pakistan through Secretary M/O interior vs. General ® Pervez Musharraf and others**<sup>4</sup> wherein it was held that:

" ... 12. Apart from the above discussion, considering the question of inclusion or retaining the name of respondent No. 1 in the ECL, thereby restricting his freedom of movement, we also cannot lose sight of the fact that under Article 15 of the Constitution freedom of movement is one of the fundamental rights guaranteed to every citizen of the Country, which cannot be abridged or denied arbitrarily on mere liking or disliking within any lawful justification for this purpose."

On a literal reading of Article 15 of the Constitution we are inclined to agree with the judgement reported as **Mian Muhammad Shahbaz Sharif vs Federation of Pakistan Through Secretary Ministry of Interior, Government of Pakistan and others**<sup>5</sup> that while various rights have been granted to a citizen of Pakistan to live in Pakistan and subject to any "reasonable" restriction that is made by a "law" in the "public interest" to "enter and move freely throughout Pakistan" and also to either "reside or settle in any part of Pakistan, we cannot see any right that has been conferred solely by Article 15 of the Constitution which guarantees a fundamental right to a citizen of Pakistan to leave the territory of Pakistan. That being said the decision of the Supreme Court of Pakistan reported as **Pakistan Muslim League (N) Through Khawaja Muhammad Asif, M.N.A. And Others vs. Federation Of Pakistan Through Secretary Ministry Of Interior**<sup>6</sup> and **Federation of Pakistan through Secretary M/O interior vs. General ® Pervez Musharraf and others**<sup>7</sup> are respectively of

<sup>3</sup> 2014 SCMR 856

<sup>4</sup> PLD 2016 570

<sup>5</sup> PLD 2004 SC 583;

<sup>6</sup> PLD 2007 SC 642

<sup>7</sup> PLD 2016 570

a larger bench of six learned judges and five learned judges of the Supreme Court of Pakistan and hence to our mind we are obligated under Article 189 of the Constitution to follow those decisions.<sup>8</sup>

(ii) **Article 9 read with Article 15 and Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973**

9. In the decision reported as **Government of Pakistan through Secretary, Ministry of Interior and another vs. Dada Amir Haider Khan**<sup>9</sup> the Supreme Court of Pakistan held that:

“ ... However, Article 15 which confers upon every citizen, *inter alia*, the right to enter and move freely throughout Pakistan, is of greater relevance. Article 15 Guarantees to every citizen the right to remain in, enter and move freely throughout Pakistan. But his right to enter the country, are subject to reasonable restrictions imposed by law in the public interest. **By reading the provisions of Article 4, 9 and 15 it is manifest that every citizen has the liberty to go abroad and to enter Pakistan**, unless he is precluded from doing so under some law made in the public interest. The Passports Act, 1974 is one such law. ...

Moreover, a citizens right to travel abroad is an important aspect of the citizens liberty and is closely relate to the rights of free speech and association. As nations in the world become politically and commercially more dependent upon one another and foreign policy decisions have come to have greater impact upon the lives of the citizens, the right to travel has become correspondingly more important. Through travel, by private citizens as well as by journalist and Government Officials, information necessary to the making of informed decisions can be obtained. And under our constitutional system, the ultimate responsibility for the making of informed decisions rests in the hands of the people.”

The argument that the fundamental right to “liberty” as guaranteed under Article 9 of the Constitution seems to have been first held in the decision of the Lahore High Court, Lahore reported as **Syed Abul A'ala Maududi vs. The Central Government Of Pakistan**<sup>10</sup> wherein it was held that the expression “liberty” as used in the Constitution of Pakistan, 1962 entitled Security of Person, and which parallels with Article 9 of the Constitution, was wide enough to include the ability to exercise his right to travel outside of Pakistan. However, such a right, not being an absolute right and being subject to the “law” required that the executive when restricting such a right must do such under the sanction of a statute, failing which it would fall afoul of clause (b) of Sub-Article (2) of Article 4 of the Constitution. A similar interpretation was case in another decision of the

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<sup>9</sup> PLD 1987 SC 504

<sup>10</sup> PLD 1969 Lahore 908

Lahore High Court reported as **Ch. Zahur Illahi vs. Secretary to Government of Pakistan Ministry of Home and Kashmir Affairs Rawalpindi**<sup>11</sup>

10. The Supreme Court of Pakistan in the decision reported as **Government of Pakistan through Secretary, Ministry of Interior and another vs. Dada Amir Haider Khan**<sup>12</sup> has also held that the right to travel outside of Pakistan is included in a citizen's right to liberty and which was guaranteed by Article 9 of the Constitution. However, the right to liberty being subject to the caveat of being subject to "law" would therefore make it incumbent on the government when exercising its right under any law that is promulgated to ensure that the action that they are taking to restrain a citizen of Pakistan from leaving the jurisdiction of Pakistan is taken as clarified in that judgment to be taken "fairly, reasonably and in good faith." In that decision it was held by the Supreme Court of Pakistan that:

" ... The learned Judges in the High Court, while allowing the writ petition, relied on the provisions of sub-Article 2(a) of Article 4, according to which 'no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law'. As there is not much difference between Article 9 and Article 4(2)(a) and the former appears merely to be a deduction from the latter, Article 9, therefore, does not take the matter any further. However, Article 15, which confers upon every citizen, inter alia, the right to enter and move freely throughout Pakistan, is of greater relevance. Article 15 guarantees to every citizen the right to remain in, enter and move freely throughout Pakistan. But his right to- enter the country if he is leaving it or has gone abroad and his right to step out and step in the country, are subject to reasonable restrictions imposed by law in the public interest. By reading the provisions of Articles 4, 9 and- 15, it is manifest that every citizen has the liberty to go abroad and to enter Pakistan unless he is precluded from doing so under some law made in the public interest. The Passports Act, 1974 is one such law.

It is now well-established law that a discretion vested in a public authority must be exercised fairly, reasonably and in good faith.

In the present case, no reasons whatever were given by the appellant No.2 to indicate why the respondent could not be issued a passport. Such an order is not a proper order as without disclosing the reason why the discretion had been exercised against the respondent, it is not possible to say whether the discretion exercised has been exercised properly or arbitrarily. Before the High Court, no doubt, the reason for non-issuance of the passport was given, namely, that the respondent was an old

<sup>11</sup> PLD 1975 Lahore 499

<sup>12</sup> PLD 1987 SC 504; Followed by this Court in **Saleem Akhtar vs. Federation Of Pakistan** PLD 1999 Karachi 177; **Hashmat Ali Chawla vs. Federation Of Pakistan** PLD 2002 Karachi 705; **Kishar Jabeen vs. Federal Government of Pakistan through Secretary Ministry of Interior Affairs** 2005 YLR 2348; **Khan Muhammad Mahar vs. Federation of Pakistan** PLD 2005 Karachi 252; **Mian Munwr Ahmed vs. Federation of Pakistan** 2008 YLR 1508; **Abdul Qayyum Khan vs. Federal Government of Pakistan through Federal Secretary Ministry of Interior, Interior Division, Pakistan Secretariat and 2 others** PLD 2009 Karachi 361; **Habibullah Niazi vs. Federation of Pakistan through Federal Secretary Ministry of Interior, Pakistan Secretariat Islamabad and 2 others** PLD 2009 Karachi 243; **Farooq Saleh Chohan vs. Government of Pakistan Ministry of Interior, through Secretary/Section Officer Islamabad** PLD 2010 Karachi 394;

political worker having 'Communist thoughts'. This was the sole reason indicated.

We do not think this reason Was a reasonable ground on which a citizen's liberty to travel abroad could be curtailed. Undoubtedly, to travel abroad could be barred if it was shown that thc: respondent was going abroad to meet the enemies of the country and Ins foreign visit could ' endanger the security of the State or was against the public interest.

Moreover, a citizen's right to travel abroad is an important aspect of the citizen's liberty and is closely related to the rights of free speech and association. As nations in the world become politically and commercially more dependent upon one another and foreign policy decisions have come to have greater impact upon the lives of the citizens, the right to travel has become correspondingly more important. Through travel, by private citizens as well as by journalist and Governmental officials, information necessary to the making of informed decisions can be obtained. And, under our Constitutional system, the ultimate responsibility for the making of informed decisions rests in the hands of the people: Thus, the reason given, even before the Court was not aproper reason."

**B. Exit from Pakistan (Control) Ordinance, 1981**

11. Section 2 of the Ordinance, 1981 read as hereinunder:

“ ... 2. Power to prohibit exit from Pakistan.

(1) The Federal Government may, by order, prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents.

(2) Before making an order under sub-section (1), the Federal Government shall not be necessary to afford an opportunity of showing cause to the person against the order.

(3) If, while making an order under sub-section (1) it appear to the Federal Government that it will not be in the public interest to specify the ground on which the order is proposed to be made, it shall not be necessary for the Federal Government to specify such grounds.”

12. Rules have been framed under Section 5 of the Ordinance, 1981 and which are referred to as the Exit from Pakistan (Control) Rules, 2010 (hereinafter referred to as the Rules, 2010) and which un Rule 2 of the Rules, 2010 clarify the basis for the Federal Government issuing a notice under Section 2 of the 1981, Ordinance as hereinunder:

“ ... 2. Grounds to prohibit persons from proceeding from Pakistan to a destination outside Pakistan.

(1) The Federation Government may, oy an order in writing under subsection (1) of section 2 of the Exit from Pakistan (Control) Ordinance, 1981 (XLVI of 1981), prohibit any person from proceeding from Pakistan to a destination outside Pakistan notwithstanding the fact that any person is in possession of valid travel documents if he is involved in:



(a) corruption and misuse of power or authority causing loss to the government's funds or property;

(b) economic crimes where large governments funds have been embezzled or institutional frauds committed;

(c) acts of terrorism or its conspiracy, heinous crimes and threatening national security;

(d) case of key directors of a firm, in default of tax or liabilities of not less than ten million rupees;

(e) case of two or more key or main directors of a firm, in default of loan or liabilities exceeding one hundred million rupees;

(f) any case and his name forwarded by the Registrar of a High Court, Supreme Court of Pakistan or Banking Court only; or'

(g) drug trafficking.

(2) Nothing in sub-rule (1) shall apply to –

(a) persons involved in private disputes where government interest is not at stake, except cases of fraud against foreign banks and reputable companies with significant foreign investments;

(b) person involved in crime like murder and dacoity, etc., unless special grounds are furnished by the relevant home departments;

(c) directors who represent foreign investment in business;

(d) women or children undergoing education who are appearing as directors merely due to their family relationship with major shareholders;"

**(i) Literal Interpretation of the provisions of Section 2 of the 1981, Ordinance and Rule 2 of the Rules, 2010**

A literal reading of Sub-Section (1) of Section 2 of the Ordinance, 1981 would apparently confer on the Federal Government the right to pass an order to restrain either a person or a "class" of person from leaving the territorial jurisdiction of Pakistan even if he has obtained the requisite documents entitling him to travel to such a place. It would also seem that after the decision of the Supreme Court of Pakistan in **Messrs Mustafa Impex, Karachi, and others vs. The Government of Pakistan through Secretary Finance, Islamabad and others**<sup>13</sup> the power of the Federal Government under Sub-Section (1) of Section 2 of the 1981, Ordinance would have to be collectively exercised by the Federal Cabinet. A restriction under Sub-Section (1) of Section 2 of the 1981, Ordinance could only be made if the Federal Government finds that a person is involved in some act which would fall with clause (a) to (g) of Sub-Rule (1) of Rule 2 of the 2010, Rules and with the further caveat that such persons who fail

<sup>13</sup> PLD 2016 SC 808

within clause (a) to (b) of Sub- Rule 2 of the 2010 Rules shall be amenable to being restricted from leaving the territory of Pakistan. Sub-Section (2) of Section 2 of the 1981, Ordinance specifically excludes a persons who is being subjected to an order under Sub-Section (1) of Section 2 of the 1981, Ordinance from being afforded a hearing prior to such an order being passed; thereby specifically excluding a fundamental rule of natural justice- a right to a hearing. Sub-Section (3) of Section 2 of the 1981, Ordinance, attempts to exlude another fundamental rulw of natural justice- the right to a reason. This exception is however subject to the qualification that the Federal Government i.e. the Federal Cabinet would specifically have to clarify in that order that such an order restraining a person from leaving the jurisdiction of was being done in the public interest.

**(ii) The Right to a Hearing**

13. The 1981, Ordinance has been interpreted by both this Court and the Supreme Court of Pakistan. In the decision reported as **Abdul Hafiz Pirzada vs. Government of Pakistan**<sup>14</sup> while interpreting Sub-Section (2) of section 2 of the 1981, Ordinance this Court had held that no mandatory right to have a hearing can be considered to be conferred on a person prior to including there name on the ECL, it being considered that:

“ ... We are of the view that having regard to the nature of the action involved in prohibiting the person from proceeding to any desitination outside Pakistan, the audi alteram partem must be held excluded, because of notice were to be give to the persons who in possession of valid traved documents and reasonable opportunity afforded to them to show cuse as why they may not be prohibited from proceeding from Pakistan to any desitination outside Pakistanl they might immediately, on the strength of valid travel documents, make good their exit from Pakistan and the object of prohibiting them from proceeding would be frustrated.”

A contrary view has been take by three other Division Benches of this Court as herein under

- (i) in the decision reported as **Ashfaq Yousuf Tola vs. Federation of Pakistan through Secretarym Ministry of Interior and Narcotics Control, Islamabad**<sup>15</sup> wherein it was held that:

“ ... Learned counsel asserted that after settlement of the dispute with NAB there could be no conceivable justification for placing fetters upon his right of

<sup>14</sup> 1989 CLC 79

<sup>15</sup> PLD 2006 Karachi 193

movement. Having failed to obtain redress from the concerned quarters he moved this Court and notices were issued to respondents after admitting the petition on 26-10-2005. It is well-established that though the power to prohibit a person from leaving Pakistan is available to the Federal Government such power is subject to well-established limits. Normally a person is bound to be heard before passing of the order unless it is considered in the public interest not to specify grounds. In the instant case there appears to be no declaration that failure to assign grounds was based on any consideration of public interest. Learned standing Counsel who had appeared on the last date of hearing requested for two weeks time to obtain instructions but states that despite having addressed letter to the concerned officers no response has been received. The petitioner has admitted that at one time there were certain allegations against him which could amount to offence under the Accountability Act but the matter was amicably settled about four years ago and there is no allegation of any criminal offence against him. This contention goes un-rebutted. We are therefore of the view that placement of the petitioner's name on the ECL amounts to a serious inroad on his liberty and it is directed that his name should be removed forthwith from the ECL. The petition is allowed."

- (ii) in the decision reported as **Muhammad Khyzer Yousuf Dada vs. Federation of Pakistan through Secretary, Ministry of Interior**<sup>16</sup> wherein it was held that:

" ... 10. The principle laid down in the above case has application to the present case on all fours for that neither any ground has been provided for putting the name of petitioner on ECL nor the enquiry/investigation which is going on for more than two years has concluded. Admittedly no case is pending against the petitioner nor was he given any opportunity of personal hearing nor any notice of intimation was served upon him. Merely on the ground that there is apprehension that petitioner may flee Pakistan is not a ground for depriving him from exercising his fundamental right of traveling freely."

- (iii) in the decision reported as **Zurash Industries (Pvt.) Ltd. vs Federation of Pakistan through Secretary, Ministry of Interior, Islamabad**<sup>17</sup> it was held that:

" ... 15. Above case-law indicates the position in law to be as under:

(1) Right to travel abroad is an important aspect of citizen's liberty and is closely related to rights of free speech and association.

<sup>16</sup> PLD 2011 Karachi 546

<sup>17</sup> PLD 2011 Karachi 385

2) Placement of name on ECL amounts to serious inroad on liberty of the citizen.

3) Principles of natural justice require that in every statute requirement to give notice or show cause must be read as an integral part unless specifically or by necessary intendment excluded

4) Normally a person must be heard before an order adverse to him is passed. However in emergent situations, prior hearing may be dispensed with.

(5) However in such cases show-cause notice should follow the order with a reasonable period.

(6) Reasons for the action taken must be disclosed and normally spelt out in the order. However, if it is considered in the public interest not to specify the grounds, they may not be disclosed. However there must be specific statement in the order itself regarding reasons because of which reasons for action taken have not been disclosed.

(7) If the order by which a person is barred from going abroad does not contain any reason the order is most likely to be set aside.

(8) If there is no provision in the substantive law under which a person is being proceeded against that his name be placed on ECL it would normally, be not permissible to the authorities to place name on ECL.

(9) Pending of a criminal case does not ipso facto disentitle a person from travelling abroad.

(10) In any case, where allegation if ultimately proved would result in order of recovery of the amount if the petitioner is able to provide sufficient security, it would be more appropriate that such security be obtained rather than the person be barred from exercising his fundamental right."

### **(iii) Involvement in a Criminal Investigation or Trial**

14. In the decision reported as **Naheed Khan vs. Government of Paksitan**<sup>18</sup> a Division Bench of this Court in a case where the Petitioners name had been included in the ECL on account of her being implicated in a criminal investigation and who was not forewarned about such an action,

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<sup>18</sup> PLD 1997 Karachi 513

while considering that there was no infirmity in restraining her movement, a Division Bench of this Court held that:

“ ... In the present case, it can be clearly spelt out that if permission had been granted to the petitioner to leave Pakistan, the Ehtesab process which was proposed to be initiated against the petitioner could be delayed. Therefore, it cannot be said that the action taken against the petitioner in the present case was either unreasonable or that the same was not in public interest. No doubt, the grounds for placing the petitioner's name on Exit Control List were not supplied to the petitioner, but nevertheless if there was any technical flaw, in the impugned action, no real prejudice was caused to the petitioner because the petitioner could yet have applied for a review, after she had been informed about placing of her name on Exit Control List. However, the impugned action neither being unreasonable nor in violation of any fundamental right and the same being taken in public interest, is not liable to be struck down merely for the reason that grounds for the same had not been supplied to the petitioner. Therefore, the petition has no force.”

15. The Lahore High Court, Lahore in the decision reported as **Wajid Shamsul Hassan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad**<sup>19</sup> took a different view holding that:

“ ... 14. In view of the above discussion, I have no doubt in my mind that the right of a citizen to travel abroad is a fundamental right guaranteed by Articles 2A, 4, 9, 15 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Abridgement of this fundamental right by the State through the legislative or an executive measure has to be tested on the touchstone of the Constitutional provisions. The life, liberty or property of a citizen cannot be taken away or adversely affected except in accordance with law. However, the "law", I mean, a valid law which does not come in conflict with any of the provisions of the Constitution and should not be a law which is ex facie discriminatory. 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. Even the valuable rights of citizens of being heard and of knowing the reasons for such an action have been denied. The provisions of law are, therefore, ex facie discriminatory as also capable of being administered in a discriminatory manner. If no reasons are assigned to an aggrieved person the remedy of review under section 3 of the Ordinance by making a representation becomes redundant. A citizen would not be in a position to make any effective representation in the absence of any reason or a speaking order. Prima facie, it may be difficult to sustain the validity of the Ordinance on the touchstone of Articles 2A, 4, 9 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. Under this law, there is a scope for the executive to adopt a policy of pick and choose in any case without there being any justifiable grounds. I, however, refrain from expressing any final opinion in this regard for the reason that the vires of the Ordinance have not been specifically challenged in the writ petition. The same would be examined in some other appropriate case where a specific challenge to the validity of the said Ordinance is made. However, in the present case, the impugned order dated 14-11-1996 does not contain any reasons in support thereof. It is an arbitrary and a mala fide order. The same is a nullity in the eye of the Constitution and the law. In the absence of any valid reasons, the validity of the impugned order dated 14-11-1996 cannot be adjudged and the same has, therefore, to be struck down as without lawful authority. Similar is the position of impugned order dated 19-1-1997 whereby the representation of the petitioner was rejected without informing him of any grounds or reasons for its rejection. In the cases of Ch. Zahur Ilahi (supra). and Shahid Afzal v. Government of

<sup>19</sup> PLD 1997 Lahore 617

Pakistan PLD 1977 Lahore 117, it has been held that a duty is cast on every Tribunal to give reasons for their decision. The rule is that the record must show that the Tribunal did consider the questions of law and fact arising in the case before it gave its decision. It means that the order of the Tribunal must be a speaking order and it should hold out that its maker was conscious of the questions to be considered, and decided and that he did apply his mind to them. It was, therefore, held that a Tribunal empowered to pass orders which may deprive a person of his liberty, property, status or livelihood or impose a penalty or cause a slur on his reputation, must give its reasons for the order. The Hon'ble Supreme Court of Pakistan has also taken the same view in the case of Dada Amir Haider Khan (supra). In the absence of any mention of reasons in the impugned orders, I should legitimately take the view that there was no reason at all available with the Federal Government to pass the impugned orders. It did not bother even to file the written statement to the writ petition. Mere oral assertions on behalf of the Government apart from being extraneous and invalid are not worthy of any credit. The impugned order was passed on 14-11-1996 whereas the case F. I. R. No. 13 of 1996 was registered by the F.I.A. Karachi, on 26-11-1996. It is not possible to take into consideration the subsequent F.I.R. for the purpose of examining the validity of the impugned order dated 14-11-1996. Moreover, the petitioner has already been granted bail on 21-12-1996 in the said criminal case by order of the Sindh High Court, Karachi. The liberty of the petitioner could not be curtailed by mere registering a criminal case for which he may or may not be criminally liable. Mere registration of F.I.R. in a criminal case cannot be a ground for depriving a citizen of the exercise of all fundamental and other Constitutional rights. The registration of a criminal case has no nexus with and is extraneous to the object of the Statute. In taking this view, I find the support from the judgments in the cases of M. Younis Malik and A. Ghani (supra) from the foreign jurisdiction. In *Montgomery Flour and General Mills Ltd. v. The Director, Food Purchases*, West Pakistan PLD 1957 Lahore 914, late B.Z. Kaikaus, J. said: No discretion vested in an executive officer, is an absolute and arbitrary discretion. The discretion is vested in him for a public purpose and must be exercised for the attainment of that purpose. Even though there are no express words in the relevant legal provision to that effect, the discretion is always circumscribed by the scope and object of the law that creates it and has at the same time to be exercised justly, fairly and reasonably – Whenever an enactment empowers a public officer to pass orders that benefit or harm a citizen, the citizen gets a right that, in a matter in which he is concerned an order be passed in accordance with the law. This too is a right that can be enforced by the Court in the exercise of its writ jurisdiction under Article 170 of the Constitution of Pakistan, 1956". In the case of *Independent Newspapers Corporation v. Chairman, Fourth Wage Board* 1993 SCMR 1533, the Hon'ble Supreme Court has held that the expressed Statutory powers of public functionary is not to be pushed too far as conferment implies restraint so as to exercise the same justly and reasonably and that excessive use of lawful powers is to be unlawful. In the case of *Sh. Zahur Ilahi v. The State* PLD 1977 SC 273 at page 298, it was held that if an executive act was done with the intention to misuse powers the same was to be set aside by the Courts."

16. However, in the decision reported as **Babar Khan Ghorl and another vs. Federation of Paksitan and others**<sup>20</sup> another Division Bench of this Court has held that the belated inclusion of a persons name on the ECL during the pendency of criminal cases as against them would not be a cogent reasons for placing their name on the ECL keeping in mind that they

<sup>20</sup> PLD 1999 Karachi 402

had been travelling freely outside during the pendency of such criminal cases, it being specifically held that:

“ ... The objections filed by respondents Nos 1 and 2 are scanty. It appears that, both the respondents, viz, Federation of Pakistan and Government of Sindh, have remained evasive with reference to the facts and grounds mentioned and raised in these petition. Learned Counsel for the petitioners has specifically argued that, these petitioners, on several occasions both, prior to and after registration of cases against them have gone abroad and had come back. We had specifically asked learned Dy. A.G. id said criminal cases were the ground for prohibiting them from going abroad as to whether they were permitted on earlier occasion to go abroad, when those cases were already registered against them, he simply replied he could say nothing about it. In face he has no reply for it. We are of the view that the names of the petitioners ought not to have been placed on the Exit Control List (ECL). In such circumstances they are entitled to proceed abroad.”

Similar findings to this decision have, notwithstanding Rule (2) of Sub Rule 2 of the Rules, 2010, been given by various Division Benches of this High Court in the decisions reported as **Farooq Saleh Chohan vs. Government of Pakistan Ministry of Interior, through Secretary/Section Officer Islamabad**,<sup>21</sup> **Masood Ahmed vs. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad**,<sup>22</sup> **Babar Qayyum Raja vs. Federation of Pakistan through Secretary interior, Ministry of Interior**,<sup>23</sup> **Farooq Saleh Chohan vs. Government of Pakistan, Ministry of Interior through Secretary/Section Officer, Islamabad**,<sup>24</sup> **Mian Ayaz Anwar vs. Federation of Pakistan through Secretary interior and 3 others**,<sup>25</sup> **Muhammad Khyzer Yousuf Dada vs. Federation of Pakistan through Secretary, Ministry of Interior**,<sup>26</sup> **Zuraish Industries (Pvt.) Ltd vs. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad**,<sup>27</sup> **Tariq Iqbal Khan vs. Government of Pakistan through Secretary, Ministry of Interior**,<sup>28</sup> **Pervez Musharraf vs. Pakistan through Secretary**,<sup>29</sup> **Wasatullah Jaffery vs. Ministry of Interior**,<sup>30</sup> **Syed Masood Hussain Shah vs. Federation of Pakistan through Secretary Ministry**,<sup>31</sup> **Syed Arsalan Iqbal vs. Government of Pakistan through Secretary, Ministry of Interior, Islamabad**,<sup>32</sup> **Miss Ayan Ali vs. Federation of Pakistan**,<sup>33</sup> **Rafique vs. Federation of Pakistan through**

<sup>21</sup> PLD 2010 Karachi 394

<sup>22</sup> 2010 YLR 28

<sup>23</sup> 2010 CLC 373

<sup>24</sup> PLD 2010 Karachi 394

<sup>25</sup> PLD 2010 Lahore 230

<sup>26</sup> PLD 2011 Karachi 546

<sup>27</sup> PLD 2011 Karachi 385

<sup>28</sup> 2012 PCr LJ 1511

<sup>29</sup> PLD 2014 Karachi 389

<sup>30</sup> PLD 2014 Karachi 28

<sup>31</sup> 2015 MLD 124

<sup>32</sup> 2015 YLR 1460

<sup>33</sup> 2017 PCr LJ 920

**Secretary, Ministry of Interior, Islamabad,<sup>34</sup> Sadaf Sharjeel vs.National Accountability Bureau Sindh through Director General<sup>35</sup> and Mrs Faryal Talpur vs.Federation of Pakistan<sup>36</sup>**

17. The Supreme Court of Pakistan in the decision reported as **The Federal Government through Secretary Interior, Government of Pakistan vs. Ms. Ayyan Ali**<sup>37</sup> has also considered the question as to whether the simpliciter registration of a criminal case as against a person would permit the name of that person from being restricted from travelling outside of Pakistan by placing there name on the ECL. In that decision it was held that:

“ ... It was not only in the case of *Wajid Shamsul Hassan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad* (PLD 1997 Lahore 617), where it was held that the liberty of a citizen cannot be curtailed by mere registering a criminal case, and that mere registration of FIR would not be a ground for depriving a citizen of the exercise of his constitutional right and further that registration of a criminal case has no nexus with and is extraneous to the object of the Exit from Pakistan (Control) Ordinance 1981, but even in the case of respondent No.1, in relation to the second Notification/Memorandum, this Court, while dismissing the petitioner's petition for leave, through judgment dated 13.4.2016, has held as follows:-

"5. Respondent No.1, no doubt, has been charged in a case mentioned above which is still pending adjudication in the competent Court of law. But mere pendency of a criminal case cannot furnish a justification for prohibiting her movement. It has never been the case of the petitioners that the respondent is involved in any of the cases listed in Rule 2 of the Exit from Pakistan (Control) Rules, 2010 in general or Rule 2(1)(b) in particular, inasmuch as she has not been charged to have embezzled a large government's fraud or committed institutional fraud."

However, as noted above the third Notification/Memorandum was issued on the ground clearly not falling within the parameters as prescribed by the relevant law, rules, and the above unequivocal pronouncement of this Court.

14. In issuing the third Notification/Memorandum, the petitioner has also not complied with the various directions as contained in the judgments/orders of the High Court in relation to the earlier two Notifications/Memorandums. Furthermore while issuing the third Notification / Memorandum the petitioner has also overlooked the order dated 02.6.2016, whereby the High Court restrained the petitioner from placing the respondent No.1's name on the ECL without the prior approval of the High Court.

15. The High Court has therefore rightly and justly struck off the third Notification/Memorandum. The impugned judgment does not call for any interference. The petition is accordingly dismissed"

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<sup>34</sup> 2018 MLD 579

<sup>35</sup> 2022 YLR 2441

<sup>36</sup> PLD 2002 Karachi 116

<sup>37</sup> 2017 SCMR 1179



It would therefore seem that after the decision of the Supreme Court of Pakistan in **The Federal Government through Secretary Interior, Government of Pakistan vs. Ms. Ayyan Ali**<sup>38</sup> the decision in **Naheed Khan vs. Government of Paksitan**<sup>39</sup> should not be followed.

**C. The Passport Control List and the Blocking of a Passport**

18. Section 3 of the Passport Act, 1974 (hereinafter referred to as the "1974, Act") prohibits a person from travelling outside of Pakistan and prescribes that:

" ... No citizen of Pakistan shall :

(a) depart from Pakistan by any means whatever unless he is in possession of a passport, nor otherwise than from such port or place, by such route and in accordance with such conditions, as may be prescribed; or

(b) visit a foreign country unless his passport is valid for such country."

Under Section 8 of the the Act, 1974 the Federal Government has been conferred the right to cancel, impound or confiscate a passport and which provision states as hereinunder:

" ... **8. Power to cancel, impound or confiscate passport.**

(1) A passport issued by or on behalf of the Federal Government shall be the property of the Federal Government and may by an order under the head of a secretary to the Government of Pakistan, or an officer authorised by the Federal Government in this behalf be required to be returned and shall also be liable to be cancelled, impounded or confiscated by like order.

(2) Subject to sub-section (3), before making an order under sub-section (1) in respect of the passport issued to any person, the Federal Government shall give such person notice in writing calling upon him to show cause why the order should not be made

Provided that no such notice need be given in the case of an order impounding a passport if it is necessary in the opinion of the Secretary or such other officer to take immediate action, but an opportunity to show cause against the making of the order shall be afforded to the person to whom the order relates, within two weeks from the making of the order.

(3) If the Federal Government has reason to believe that the person in respect of whose passport it is proposed to make an order under subsection (1) is; or has been engaged in subversive or in activities which are prejudicial to the interest of Pakistan or Pakistan's relations with any foreign power, it shall not be necessary to give such person the notice provided for in sub-section (2) or to afford him an opportunity of being heard.

(4) Any person in respect of whose passport an order under subsection

<sup>38</sup> *Ibid.*

<sup>39</sup> PLD 1997 Karachi 513

*(i) has been made in the circumstances referred to in subsection (3), may within thirty days of the date of the order, apply in the Federal Government for a review of the order; and the decision of the Federal Government in review shall be final.*

*5) Any expenditure incurred by the Federal Government on the repatriation to Pakistan of a citizen of Pakistan who gets stranded or becomes a destitute while he is in a foreign country, or for any other reason, shall be recoverable, as an arrear of Land Revenue."*

Under Section 13 of the 1974, Act, a power has been conferred on the Federal Government to make rules and which are the Rules, 2021 and which inter alia has under Rule 22 allowed for the creation of a PCL. The Rule reads as hereinunder:

" ... 22. Passport control list.

*(1) Federal Government is vested with the powers to regulate the departure from and entry into Pakistan and also visit to foreign countries of its citizens under the Act.*

*(2) The Division concerned and Directorate General shall prepare and maintain a PCL for placement of names and other record of individuals who have been refused passport facilities under these rules under category "A" and "B" respectively with the following description, namely:-*

*(a) under category "A", the names of those persons are placed who are involved in anti-state activities or whose visit to foreign countries is considered to be prejudicial to the State interest, or, whose visit abroad is banned from security point of view. The names in this list shall be placed and removed by the Additional Secretary of the Division concerned;*

*(b) under category „B“, the names of those persons are placed who have been refused passport under these rules other than anti-state activities specified in clause (a). The names of persons included in the category under this clause may also be placed on the recommendations of government agencies or departments;*

*(c) normal period of retaining a person on the PCL is five years. However, a person may be kept on PCL even beyond five years provided the referring department or agency recommends for further retention having full justification in this regard. The Additional Secretary of the Division concerned in case of category „A“ and Director General in case of category „B“ may consider omission of name of any person from such list on appeal even before the normal period of five years; and*

*(d) both the categories „A“ and „B“ are subject to periodical review by a Review Committee under sub-rule (3) in consultation with the relevant agency or department on whose recommendations the individual was placed on PCL;*

Additionally Rule 23 of the Rules, 2010 prescribes the manner in which under Section 8 of the 1974, Act a passport can be "impounded, confiscated or cancelled and which reads as hereinunder:

*23. Impounding, confiscation, cancellation and inactivation of passport.*

*(1) In pursuance of section 8 of the Act, the Secretary of the Division concerned shall have the power to confiscate, impound, cancel, or inactivate any passport at any time.*

*(2) Director General shall have power to impound, confiscate, cancel or inactivate ordinary and official passport.*

*(3) Additional Secretary, Ministry of Foreign Affairs shall have the power to impound, confiscate, or cancel diplomatic passport and shall forward a request to Directorate General for in-activation of such passport.*

*(4) Heads of the Pakistan missions abroad shall have the power to impound passport in respect of a person residing in a foreign country, who shall forward such passport to Director General or Additional Secretary, Ministry of Foreign Affairs for confiscation, cancellation or inactivation, as the case may be:*

*Provided that the above mentioned action shall be taken by the Head of Pakistan mission abroad, after personally satisfying himself of the undesirability of the person concerned while staying abroad.*

*(5) A passport may be impounded, confiscated, cancelled or inactivated in the following cases, namely: –*

*(a) when the person belongs to one of the classes of persons to whom passport is refused under Rule 21;*

*(b) when a person is found to be in wrongful possession of a passport; or*

*(c) when a person is found to be involved in un-desirable activities mentioned in sub-rule (6).*

*(6) For the purpose of sub-rule (4), the following shall be the grounds on any of which a passport may be impounded, namely:*

*(a) activities, prejudicial to the interest of Pakistan involving security of the country;*

*(b) while on good evidence, found to have fled Pakistan to avoid prosecution for criminal or other offence; or*

*(c) found to have indulged in racketeering or forgery in passport; or*

*(d) convicted in the host country of a crime involving moral turpitude; or*

*(e) has been generally indulging in activities of a criminal nature; or*

*(f) has used physical violence against the personnel or property of the mission concerned; or*

*(g) being a government servant and for the time being employed in a foreign country has extended his contract with a foreign government without prior approval of the Government of Pakistan.*

*(7) The details of passport impounded shall be communicated to the Directorate General. Time, date and place of entry of the returnee into Pakistan shall also be intimated well in advance by the Pakistan mission abroad to Directorate General who may take necessary steps to proceed against the returnee in accordance with these rules, where necessary.*

(8) *An impounded passport may not be cancelled but kept in safe custody.*

(9) *Refusal or failure to surrender the passport on requisition under this rule renders the person to whom it was issued liable to prosecution under section 175 of the Pakistan Penal Code, 1860 (Act XLV of 1860)."*

19. As is understood, it is now impossible for a person to exercise their right to travel without a passport and depriving someone of their entitlement to a passport would be akin to preventing someone to exercising their right to travel. The Courts in Pakistan have had the occasion of considering the authority of government to deprive a citizen of Pakistan to their entitlement of a passport and which has been considered in the following judgments:

- (i) In **Syed Abual Aala Maududi vs. The Central Government of Pakistan**<sup>40</sup> where the Petitioner, who was the head of of the Jama'at Islami and who was restrained from leaving Pakistan despite holding a valid passport, the Court maintained a Petition contending that such a restrain was in violation of his fundamental right to "liberty" and where the Division Bench of the Lahore High Court disagreed Muhammad Akram, J finding that there had been a violation of the Petitioner's fundamental right to liberty while Muhammad Gul, J., while allowing the Petition on other grounds, contrarily found that the restraint did not violate the Petitioner's fundamental rights to "liberty";
- (ii) Similarly, in **Syed Sharifuddin Pirzada vs. Federation of Pakistan and another**<sup>41</sup> wherein when the Petitioner had been restrained from travelling outside of Pakistan under Rule 31 of the Defence of Pakistan Rules, a full bench of this Court considered the same issue and by a majority held that a restraint on a person to leave the country was not a violation of the fundamental right to "liberty", the majority judgment authored by Tufail Ali A. Rahman C.J. holding as herein under:

" ... *The other line of attack of Mr. Brohi was based upon Articles 3 and 8 of the Interim Constitution of Pakistan. It is obvious of course that since the action that the petitioner is complaining of, as distinguished from the validity of the law which he is*

<sup>40</sup> PLD 1969 Lahore 908

<sup>41</sup> PLD 1973 Karachi 132

challenging, have taken place after the passage of the Interim Constitution Article 281 would have no bearing upon its validity. The argument was that Article 3 which itself, it was emphasised, is not one of the fundamental rights and cannot, therefore, be taken away by or under any Proclamation of Emergency is, if I may put it that way, more fundamental than the fundamental rights themselves. In sub-Article (1) of this Article what is stated to be the unalienable right of every citizen and of every other person for the time being in Pakistan is to enjoy the protection of law and to be treated in accordance with law and only in accordance with law. Sub-article (2) reads as follows:--

"(2) In particular -

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from, or be hindered in doing anything not prohibited by laws and

(c) no person shall be compelled to do anything the law does not require him to do."

It will be seen that this Article is in terms identical with Article 2 of the Constitution of 1962. Now it is elementary in our system of law that the executive has no power except such as has been given to it by law, and that anything done, which in any manner adversely affects a citizen or any other person for the time being in the country, must have the warrant of power duly conferred by law and would otherwise be illegal. I have, therefore, sometimes wondered as to the need for the incorporation of Article 2 in the former Constitution or article 3 in the present Interim Constitution. The difficulty I felt was that it is not lightly to be assumed in the case of any statute that it is making a provision which is wholly unnecessary and I have, therefore, long endeavoured to find some meaning in the Article which would add to the law as it already exists, I am unable to read it as being a guarantee against legislation of any kind because the whole provision of the Article in question is to enjoy the protection of law and not to impose any restriction on the power to make law itself. The argument of counsel on both sides was that it is, at least, not inappropriate in statutes of a constitutional character to declare a cherished doctrine of law which embodies the right of a people by way of re-arming faith in that doctrine and a firm determination of adherence thereto. This might well be so, but I would nevertheless feel more re-assured if I could find some more meaning in the Article than a mere declaration of what the law is and always has been. Perhaps and say so with a sense of extreme respect-the answer might lie in the observations of the present Chief Justice of Pakistan in the case of the Government of Pakistan v. Begum Agha Abdul Karim Shorish Kashmiri (P L D 1969 S C 14) at p. 31 where his Lordship observed :-

"In my view the words "in an unlawful manner" in sub clause (b) of Article 98 (2) have been used deliberately to given meaning and content to the solemn declaration under Article 2 of the Constitution itself that it is the inalienable right of every citizen to be treated in accordance with law and only in accordance with law. To my mind, therefore, in determining as to how and in what circumstances detention would be detention in an unlawful manner one would inevitably have first to see whether the action is in accordance with, law, if not, then it is

*action in an unlawful manner. Law is here not confined to statute law alone but is used in its generic sense as connoting all that is treated as law in this country including even the judicial principles laid down from time to time by the superior Courts. It means according to the accepted forms of legal process and postulates a strict performance of all the functions and duties laid down by law. It may well be, as has been suggested in some quarters, that in this sense it is as comprehensive as the American "due process" clause in a new garb. It is in this sense that an action which is male fide or colourable is not regarded as action in accordance with law. Similarly action taken upon extraneous or irrelevant considerations is also not action in accordance with law. Action taken upon no ground at all or without proper application of the mind of the detaining authority would also not qualify as action in accordance with law and would, therefore, have to be struck down as being action taken in an unlawful manner."*

13. However, in the present case a continuation of this discussion would, I think, be extremely academic because the whole question eventually is whether or not rule 51 is good law and, even if good, whether the order made thereunder is valid. If it is, then the action taken by Government to the prejudice of the petitioner cannot be said to be violative of Article 3; if it is not, then even if Article 3 did not exist we should have to declare the action bad and to enforce the right of the petitioner which is thereby denied.

14. The other branch of this argument is based upon Article 8 of the Constitution which is in this language

*"No person shall be deprived of life or liberty save in accordance with law,"*

*and here again the short answer would be that since Article 8 talks merely of a right "not to be deprived of life and liberty, save in accordance with law", the question again boils down to the same one; namely, is the law in question valid? A great deal of arguments was urged at the bar as to the meaning of the word 'liberty', both in Article 8 and in Article 3. It is to be observed that the word is unqualified by the adjective "personal" or any other similar epithet. It was on that ground argued that liberty here meant very much more than personal liberty which is the expression used in the corresponding Article of the Indian Constitution. The argument was developed by quotations particularly from American authorities specially Kent v. Dulles (357 U S 116). Since the Fifth Amendment to the American Constitution again uses the word 'liberty' without qualification we were invited to hold that the word 'liberty' is an utter freedom to do exactly what one pleases which would of course include leaving the country.*

15. Apart from precedents, this meaning was sought to be given to the word 'liberty' not only from the lack of its qualification by, a word like 'personal' but by contrasting the use of the word 'deprived' in Article 8 with the word 'detrimental' in Article 3. It was argued that it was totally impossible to conceive of a partial deprivation of life and that, therefore, the word 'deprived, in Article 8 must be understood so as to make the Article a barrier in the way of the any attempt to curtail life, and consequently liberty here means all kinds of liberty without qualification. If that meaning were to be accepted in Article 8, it was then argued that the word must bear the same meaning in Article 3 since a word used in one part of a statute would ordinarily convey the same meaning when used in another part.

*For a variety of reasons I am unable to accept so wide a conception of "liberty".*

16. *It is true that unlike Article 8 many other Article of the Constitution which conferred some fundamental rights of freedom qualify that right in some form or the other and that nowhere in those other Articles is the word "liberty" used. If that were the conclusive or even the guiding principle of interpretation I think this could lead to some very startling results, I cannot believe that the Constitution intended to give to every person liberty so to act as to interfere with the liberty of others. Indeed such liberty would be a contradiction in terms, and yet, if this meaning is to be accepted, I may trespass into my neighbors garden not only without his consent but against his will and claim that what I am doing is in the exercise of my own liberty. The obvious answer of course would be that there is no danger of the word 'liberty' being so understood since in both Articles the right conferred is subject to law and such unrestrained use of liberty quite obviously would conflict with one or the other law including those which provide for the rights of others.*

17. *I proceed to consider next the argument as approached by the contrast between the words 'deprived' and 'detrimental'. The expression 'deprived' is defined in the dictionary as meaning) "to divest, bereave, dispossess" while the word 'detrimental' means "causing loss or damage ; prejudicial". It is said that since it is impossible to conceive of a partial deprivation of life, although one may easily understand how something may be detrimental to life without finally taking it away, the Article must be understood to protect life absolutely (of course, save in accordance with law). The word 'liberty', therefore, in Article 8 must be conceived in its absolute sense, that is, the right to do anything whatever since "deprived" is used in relation to both life and liberty. It seems to me that this imposes an unnecessary strain on language. An over literal meaning is sought to be put on the language by the argument which may be met by an equally literal answer. While I agree that it is not possible to conceive of a partial deprivation of life, a partial deprivation of 'liberty' could easily be understood. Indeed I find it difficult to conceive of an absolute deprivation of liberty. However thoroughly a person may be incarcerated and kept in chains and fetters, some amount of physical liberty, even if it be no more than the movement of one finger or the opening of the eye-lids or the movement of the tongue within, a closed mouth will still have to be left to a person and yet the word 'deprived' is used in Article 8, both in relation to life and liberty. It is difficult to accept the argument that while on the one hand the word 'liberty' used in Article 8 must bear the same meaning in Article 3, the one word 'deprived' in Article 8 must have one meaning in relation to life and another in relation to liberty though it qualifies both or relates to both in the same Article.*

18. *The question was considered by a Bench of the West Pakistan High Court sitting at Lahore in the case of Abul A'ala Maudoodi v. The State Bank of Pakistan (P L D 1969 Lah. 908). While both the learned Judges who heard the case agreed that the petition had to be allowed, Mr. Justice Muhammad Akram was of the view that the expression 'liberty' must be given the wide meaning which has been canvassed before us on behalf of the petitioner but Mr. Justice Muhammad Gul expressly disagreed on this point. It is unnecessary for me to quote extensively from the former learned Judge's judgment as I have already indicated the general lines upon which the argument was built up though he quoted other authorities in support of his argument, specially, Blackstone's commentaries to which I have not referred. Muhammad Gul, J. on the other hand was of*

*the view that, contrasting Fundamental Right No. 1 and Fundamental Right No. 5 of the Constitution of 1962 which correspond to Articles 8 and 12 of the Interim Constitution, the word 'liberty' could not bear as wide a meaning as have been placed upon it by his brother Judge. He held that the Fundamental Right No. 1 could not be interpreted in isolation and that various kinds of freedoms have been guaranteed by other Articles of the Constitution which would have been wholly redundant if so wide a meaning was to be given to Fundamental Right No. 1. With respect I find myself in entire agreement with his reasoning.*

19. In answer to this line of reasoning, Mr. Brohi pointed out that Article 2 was a part of the 1962-Constitution as originally promulgated and that the amendments which incorporated the fundamental rights were made later. He, therefore, argues that there was no question of interpreting Article 2 so as to make it harmonize with the provisions guaranteeing the fundamental rights. The meaning of the word 'liberty' in Article 2 being, thus fixed, the same meaning would have to be ascribed to it when used in Fundamental Right No. 5 of that Constitution. I should have thought that the exact opposite would be the correct conclusion, the Legislature while amending the Constitution inserted several fundamental rights and only in one of these rights used the word "liberty" which, admittedly would be understood more narrowly if Article 2 had not already fixed the meaning. The Legislature must be assumed to have been aware of the existence of- Article 2 as it was already a part of the Constitution and to have seen no incongruity in using the word 'liberty' in Fundamental Right No. 5 and, therefore, to have understood the same word in Article 2 in a narrower sense. In any event I am now construing Articles 3 and 8 of the Interim Constitution and these admittedly have been enacted at the same as also the other Articles corresponding to the Fundamental Rights of the 1962-Constitution. I think it more reasonable to infer, therefore, that the Legislature used the word 'liberty' in the narrower sense in Article 8 and, therefore, in Article 3."

(iii) In **Abdul Rauf Malik and another vs. Government of Pakistan and others**<sup>42</sup> where the Government of Pakistan has refused to renew the passport of the Petitioners, the Lahore High Court Lahore, while not considering Article 9 of the Constitution, had held that such a right was not guaranteed under Article 15 of the Constitution and dismissed the Petition.

(iv) In **Habib Jalib vs. State Bank of Pakistan and another**<sup>43</sup> a learned single judge of the Lahore High Court, Lahore while discussing the decisions of **Syed Abual Aala Maududi vs. The Central Government of Pakistan**<sup>44</sup> and **Syed Sharifuddin Pirzada vs. Federation of Pakistan and another**<sup>45</sup> while allowing the Petition on administrative

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<sup>42</sup> PLD 1978 Lahore 410

<sup>43</sup> PLD 1980 Lahore 561

<sup>44</sup> PLD 1969 Lahore 908

<sup>45</sup> PLD 1973 Karachi 132



grounds choose not to make any finding on the issue as to whether the right to a passport and to travel outside of Pakistan was a right guaranteed under Article 9 of the Constitution.

(v) In **Sobho Gianchandni vs. Federation of Pakistan and 8 others**<sup>46</sup> where the Petitioner was denied being issued a passport, a Division Bench of this Court while allowing the Petition “agreed with the enunciation of the law made in the above two citations” i.e. **Government of Pakistan through Secretary, Ministry of Interior and another vs. Dada Amir Haider Khan**<sup>47</sup> and **Mumtaz Ali Bhutto vs. Government of Pakistan and 3 others**<sup>48</sup> and while holding that the refusal to grant a passport had violated the rules of natural justice as the Petitioner had not been afforded a hearing proceeded to grant the Petition.

(vi) In **Malik Mushtaq Awan vs. Government of Pakistan and others**<sup>49</sup> a learned Single Judge of the Lahore High Court, Lahore while following the decision of the Supreme Court of Pakistan in **Government of Pakistan through Secretary, Ministry of Interior and another vs. Dada Amir Haider Khan**<sup>50</sup> and **Wajid Shamsul Hassan v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad**<sup>51</sup> while holding that it was a fundamental right to travel outside of Pakistan also held that as such rights as enshrined in Article 9 were subject to the touchstone of reasonableness and hence liable to be regulated and hence could be regulated by the Passports Act, 1974 or the Exit from Pakistan (Control) Ordinance, 1981. The Learned Single Judge also held that when Government exercises such powers under the Exit from Pakistan (Control) Ordinance, 1981 all “safeguards of procedural fairness provided in the Passports Act, 1974 shall have to be read into the Exit from Pakistan (Control) Ordinance, 1981.”

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<sup>46</sup> 1996 MLD 1569

<sup>47</sup> PLD 1987 SC 504

<sup>48</sup> PLD 1981 Karachi 98

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<sup>50</sup> PLD 1987 SC 504

<sup>51</sup> PLD 1997 Lahore 617

(vii) In **Abdul Hafiz Pirzada vs. Government of Pakistan**<sup>52</sup> a Division Bench of this Court while discussing the right to a passport and while considering various judgements of the courts of the United States concluded that:

“ ... 27. The right of a citizen to leave any country and to return to his country is recognized in the United States. While there is no restriction on the citizen to return to his own country the Government of the United States does place certain restrictions for leaving the country. Even the right to travel outside the United States is not unrestricted. The right of the American citizen to travel abroad as narrated above shows that even the right to travel outside the country is not unfettered.”

(viii) In **Mirza Ashfaq Beg vs. Federation of Pakistan**<sup>53</sup> where a person was deprived of being a passport on account of his name being on the Exit Control List on account of an application for leave to appeal pending before the Supreme Court of Pakistan, a Division Bench of this Court held that this was not a ground that could be sustained to maintain a person name on the ECL and directed the Government to remove the name of the Petitioner from the ECL;

(ix) In **Sheikh Shan Ilahi vs. Federation of Pakistan through Secretary Interior, Ministry of Interior, Islamabad**<sup>54</sup> where the Petitioner name had been “blacklisted” by the Federal Investigation Agency and were not allowed to travel outside of Pakistan, a learned Single Judge of the Lahore High Court, Lahore inter alia held that while the right to travel outside of Pakistan was a fundamental right there was no provision in the Passports Act, 1974 which allowed the Federal Investigation Agency to “blacklist” a person to prevent them from leaving the jurisdiction of Pakistan;

(x) In **Rukhsana Bibi vs. Federation of Pakistan and others**<sup>55</sup> when the Federal Investigation Agency had under Clause 51 of the Passport and Visa Manual,

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<sup>52</sup> 1989 CLC 79

<sup>53</sup> 2005 MLD 1698

<sup>54</sup> PLD 2023 Lahore 359

<sup>55</sup> PLD 2023 Lahore 522

2006, placed the name of the Petitioner's husband on a Blacklist on account of being an absconder, on a petition maintained by his wife, a Learned Single Judge of the Lahore High Court, Lahore held that if an absconder cannot be placed on a blacklist if he wishes to return to Pakistan to face a trial and directed for the issuance of a single sheet emergency passport to the Petitioner's husband;

- (xi) In Jaffar Khan vs. **Federation of Pakistan through Secretary Interior, Ministry of Interior, Islamabad**<sup>56</sup> where the Petitioner's son was stranded outside Pakistan and who was not being issued a passport on account of his name being blacklisted under the procedure prescribed in Clause 51 of the Passport and Visa Manual, 2006 on account of his being an absconder from criminal proceedings in Pakistan, a Division Bench of the Balochistan High Court directed for the issuance of emergency travel document to allow the Petitioner to travel to Pakistan;

20. The Federal Government has by virtue of Section 8 of the Act, 1974 been conferred the right to cancel, impound or confiscate a passport and whereby a Secretary to the Government of Pakistan or an officer authorised by the Federal Government is under Sub-Section (1) empowered to ask for a Passport issued by the Federal Government to be returned for the purpose of that Passport being either "*cancelled, impounded or confiscated*" after issuing that person a "show cause notice" in terms of Sub-Section (2) of Section 8 of the Act, 1974. An exception is created to such a right to a show cause notice in Sub-Section (3) of Section 8 of the Act, 1974 where it is considered that the person who is the holder of the Passport is carrying out "subversive" activities or activities that are prejudicial to the interest of Pakistan or prejudicial to Pakistan's relations with any foreign power and whereby no Show Cause Notice or hearing need be afforded to such a person. A right of opportunity to challenge such an order is thereafter provided by that statute in Sub-Section (4) of Section 8. We specifically note that while the Government has the power to cancel, impound or

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<sup>56</sup> PLD 2023 Quetta 65

confiscate a passport following the procedure specified in Section 8, the Act, 1974 does not confer the power on the Government to create a “Passport Control List” or for that matter to “Block” a Passport. Such power is conferred by the Rules, 2021 and which to our mind might well be in excess of the powers conferred by the Statute and hence void. However, as the vires of these Rules have not been challenged in these proceedings we are careful to not to pass any order on the validity of those rules in these proceedings and which can be adjudicated on in appropriate proceedings.

21. Suffice for us to say for these proceedings, the Honourable Supreme Court of Pakistan in the decision reported as **The Federal Government through Secretary Interior, Government of Pakistan vs. Ms. Ayyan Ali**<sup>57</sup> has held that the simpliciter involvement of a person in a crime is not a ground for including their name on the ECL. Similarly in the decision reported as **Government of Pakistan through Secretary, Ministry of Interior and another vs. Dada Amir Haider Khan**<sup>58</sup> the Supreme Court of Pakistan has specifically held that the a citizen of Pakistan under Article 9 of the Constitution of Pakistan, 1973 has a fundamental right to liberty and which read together with Article 4 and 15 of the Constitution would allow for them ***“to go abroad and to enter Pakistan, unless [they are] precluded from doing so under some law made in the public interest.”*** It has now been held in numerous judgements that the registration of a crime against a person is not an act which would come within the scope of the expression “public interest” to necessitate such a restriction to be placed on their fundamental right to liberty and therefore the action on the part of the Respondents in placing the name of the Petitioner on the PCL and blocking his passport is clearly not in consonance with law. These Petitions must therefore be allowed.

22. For the foregoing reasons, we are of the opinion that the actions of the Respondents of placing the name of the Petitioner on the ECL, PCL and blocking his passport are illegal and are set aside. The Respondents are hereby directed to:

- (i) Remove the name of the Petitioner from the ECL;
- (ii) Remove the name of the Petitioner from the PCL;

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<sup>57</sup> *Ibid.*

<sup>58</sup> PLD 1987 SC 504;

- (iii) Take all actions required to “unblock” the Petitioners Passport

The Petition is allowed in the above terms, with no order as to costs.

**Judge**

**Judge**

Nasim/P.A