

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 345 of 2015

Date	Order with signature of Judge
------	-------------------------------

1. For orders on office objection Nos. 1 & 2 :
2. For Katcha Peshi :
3. For hearing of Misc. No.1471/2015 :

10.03.2015 :

Mr. Obaid-ur-Rehman, advocate for the petitioner.

Mr. Salman Talibuddin, Additional Attorney General for Pakistan.

Mr. Noor Muhammad Dayo, ADPG for NAB.

ORDER

MUHAMMAD IQBAL KALHORO, J. Through the instant petition the petitioner has prayed for the following reliefs:-

- (a) Declare that the order of the Respondents whereby the name of the Petitioner has been placed on the Exit Control List is illegal, unconstitutional, null and void ab-initio and as a consequential relief strike down the same.
- (b) Suspend the operation of the order of the Respondents whreby the name of the Petitioner has been placed on Exit Control List.
- (c) Direct the Respondents to remove the name of Petitioner from Exit Control List and allow the Petitioner to travel abroad.
- (d) Any other relief which this Hon'ble Court may deem fit and proper may also be granted.

2. As per facts, the petitioner is serving as General Manager, Finance in Sui Southern Gas Company Limited (SSGCL). The petitioner came to know through some reliable sources that his name had been placed on the Exit Control List (ECL) by respondent No.1/Government of Pakistan on the request of National Accountability Bureau (NAB)/respondent No.2 on account of a reference filed against him before the Accountability Court, Islamabad. The petitioner through a letter requested the respondent No.1 for removal of his name from Exit Control List (ECL), but to no avail. More so, the memorandum of the order passed by respondent No.1 whereby the name of the petitioner was put on Exit Control List, was also not

supplied to the petitioner. With such back ground the petitioner has approached this Court through the instant petition.

3. Respondent No.1 in the comments filed in response to the contents of the petition has stated in paragraph No.3 as under:-

*“3: The name of the petitioner along with 6 others was placed on ECL on 25.01.2014, on the recommendation of NAB in **OGRA case** on the charges that accused persons in connivance with each other committed the offence of corruption, corrupt practices, misuse of authority, criminal breach of trust, misappropriation, obtaining of illegal benefits, willfully omitted the exercise of authority in the interest of state and therefore caused loss of billions of rupees. In illegal raise of UFG bench mark, Re-station of CNG Station, theft of Gas, concealment of facts, obtained Commission/kickback, converted operating income into Non Operating Income and consequently caused loss of Rs. 26 billions to the National Exchequer, in addition to the loss caused in other illegal actions for which ref No.01/2013 has already been filed before the Honorable Accountability Court. The matter is of important nature as the implementation case in OGRA Scam is also fixed in Supreme Court of Pakistan on 28.01.2014”.*

4. Mr. Obaid-ur-Rehman, learned counsel for the petitioner at the very beginning of hearing has placed before us an order passed by this Court in C.P. No.D-4325/2014 (Yusuf J. Ansari v/s Government of Pakistan & another), which is connected with two (02) other Constitutional Petitions numbered as C.P. No.D-4326/2014 filed by Zuhair Siddiqui and C.P. No.D-4327/2014 filed by Azim Iqbal, wherein the petitioners who are co-accused before Accountability Court, Islamabad along with the petitioner and whose names placed in Exit Control List in the similar circumstances as are obtaining in the present petition were ordered to be deleted from Exit Control List. While relying upon the said order he further contends that the same treatment may be meted out to the petitioner and his name may also be removed from Exit Control List.

5. Mr. Salman Talibuddin, Additional Attorney General for Pakistan, though has opposed the prayer of the petitioner, but is not able to deny that the order of this Court passed in the above said petitions has attained finality as the same has not been challenged before any higher Forum. Thrust of his arguments is mainly on the present petitioner's role which according to him is different than the ones played by the co-accused. He emphasizes that the petitioner has committed the offence of corruption, corrupt practices, and misuse of authority, criminal breach of trust and obtaining of illegal benefits, therefore if prohibition on his travelling abroad is not put in place, he will abscond away.

6. We have heard the learned counsel for the parties and perused the record. The name of the petitioner has been placed in the Exit Control List on the recommendation of NAB on the ground that he is involved in NAB Reference No.01/2014 (**OGRA Case**), pending before the learned Accountability Court, Islamabad. The co-accused namely Yusuf J. Ansari, Zuhair Siddiqui and Azim Iqbal are also facing the same proceedings in the above Reference before the same Court. They earlier filed the aforementioned petitions against the placement of their names in the Exit Control List and this Court vides order referred above ordered removal of their names from Exit Control List. Learned Additional Attorney General has not been able to explain how the case of the petitioner can be considered different from the one of co-accused, who are facing similar charges in the same Court along with the petitioner. The observations of this Court while disposing of the above petitions are pertinent to be reproduced: -

“Record reflect (sic) that there is no denial from the Respondent that names of the Petitioners were placed on the ECL without issuance of a show cause nor any clarification or explanation was sought from them. Additionally, the memorandum through which the names of the Petitioners were placed on ECL neither details any reason for doing so nor it claims exemption from giving reasons. The response filed on behalf of the Ministry of Interior as well as NAB reflect that on account of a pending reference against the Petitioners wherein it was asserted that the Petitioners are accused of committing gross mismanagement, cheating public stakeholders, corruption and causing loss of billions of rupees to the exchequer, the NAB recommended placement of their names on ECL by treating them as “flight risk” and the Ministry of Interior while complying with such request placed their names on ECL. The memorandum so issued by the Ministry of Interior placing the names of the Petitioners on ECL neither assigns any reason for so doing nor claims exemption and appears to have been issued in a mechanical manner.

On our query, learned DAG was not in a position to respond that in case the Petitioners were “flight risk” then why the Ministry of Interior had granted them repeated permissions to leave the country and that too without any condition any why the Petitioners had returned within the permitted time limit. Even this Court too had granted one time permission to the Petitioners Yusuf J. Ansari and Zuhair Siddiqui for going abroad against surety and the Petitioners returned to the country within the time frame provided. We are totally at a loss that as to how one of the most valuable liberty of a citizen in respect of traveling abroad could be abridged and that too without assigning any reason or hearing the person whose liberty/right was so curtailed. We have no doubt in our minds in holding that the Ministry of Interior acted on the instructions of NAB in arbitrary and mechanical manner without reasoning out the request of the NAB through a speaking order which of-course is a prerequisite of exercising power under Section 2(3) of the Exit from

Pakistan (Control) Ordinance 1981. Mr. Naek has rightly referred to the case-law developed by the superior Courts whereby a consistent view is taken that right of free movement which indeed includes the right of traveling abroad subject to reasonable restriction has been guaranteed under Article 15 of the Constitution of Islamic Republic of Pakistan and in case such right is to be curtailed by applying reasonable restriction then such power must be exercised fairly, reasonably and in good faith and the order whereby such restriction is imposed should not be passed mechanically on the request of any ministry or department and unless against the public interest such order must detail reason and should reflect application of mind.”

7. After going through the material available on the record, we have found that the name of the petitioner was placed in Exit Control List, without attending to the formalities underlined by this Court in the above petitions, in a mechanical manner. The liberty of a citizen, which include travelling abroad, is guaranteed under several articles of the Constitution i.e.4, 9, 14 and 15, hence the same is to be protected covetously, any action which is to curtail the liberty of a person must be taken in accordance with law and on showing sufficient cause in its favour. The Exit from Pakistan (Control) Ordinance, 1981 stipulates that when it is not in the public interest to specify the grounds on which the order to prohibit any person from proceeding from Pakistan is proposed to be made, it shall not be necessary for the Federal Government to specify such grounds. It is not the stance of the respondents here that petitioner’s travel abroad is against the public interest. Merely due to pendency of a Reference containing the allegations that accused has committed the offence of corruption, corrupt practices, misuse of authority, criminal breach of trust, misappropriation, obtaining of illegal benefits and willful omission in the exercise of authority thereby causing loss of billions of rupees to the state, the NAB authorities recommended placing the name of the petitioner on Exit Control List. We cannot lose sight of the fact that co-accused facing alike indictment have been allowed travel abroad and deletion of their names from the Exit Control List has been ordered by this Court in above mentioned petitions. Placing the name of a person on ECL on the instructions of NAB authorities in a mechanical manner without assigning any reason thereto is not the scheme of law under Section 2(3) of the Exit from Pakistan (Control) Ordinance, 1981. The memorandum through which the name of the petitioner was placed on Exit Control List has neither been supplied to the petitioner, nor has the same been placed before us to appreciate any detail or reason for its justification. That being so, it is not out of place to state here that any such restriction which is going to be imposed on a person on the request of any department shall not be resorted to unless the exit of a person from Pakistan is deemed to be against the

public interest, however, in such eventuality the detailed reasons must be assigned in the memorandum putting a clog on the travel of a person abroad. Keeping in view the above discussion as well as the observations made by this Court earlier in the above referred petitions filed by the co-accused, we allow this petition by directing the respondent No.1 to remove the name of the petitioner from Exit Control List. However, this order shall not be read to have any effect in the pending proceedings against the petitioner or the right of authorities (Federal Government) to take subject action against the petitioner in accordance with law.

J U D G E

J U D G E

Ndm