

Better copy of Memo Commission's order of 16 Jan

BEFORE

**THE COMMISSION CONSTITUTED PURSUANT TO THE ORDER OF THE
HON'BLE SUPREME COURT OF PAKISTAN**

DATED DECEMBER, 30, 2011.

ORDER

Jan. 16, 2012

Present:

Maulvi Anwar-ul-Haq, Attorney General for Pakistan.

Mr.Tariq Mehmood Jehangiri, Deputy Attorney-General. Mr.Mustafa Ramday, Advocate for Mian Muhammad Nawaz Sharif, Mr. M.Ishaq Dar and Kh. Muhammad Asif.

Mr.Zafar Iqbal Jhagra, petitioner in person.

Sardar Asmat Ullah Khan, Advocate on behalf of petitioner Raja Muhammad Farooq Haider Khan and Shah Ghulam Qadir.

Mr.Naseer Ahmed Bhutta, Advocate on behalf of petitioner Hafeez-ur-Rehman.

Dr. M. Salah-ud-Din Mengal, Advocate for petitioners Gen. (R) Abdul Qadir Khan etc.

Mr.Attique Shah, Advocate on behalf of petitioners Sardar Mehtab Abbasi and M.Zafar Iqbal Jhagra.

Mr.Muhammad Akram Sheikh, Advocate alongwith Nasir-ud-Din Khan Nayyer, Natalya Kamal and Sajeel Shahryar Advocates for Mr. Musawer Mansoor Ijaz.

Syed Zahid Hussain Bokhari, Mr.Sajid Tanoli and Hafiz Ahsan Ahmad Khokhar, Advocates for Mr. Hussain Haqqani .

Mr.Sher Bahadur Khan, Legal Advisor, Ministry of Foreign Affairs.

Lt.Col.Khalid Raja, for Directorate General ISI.

Raja Israr Abbasi, Advocate on behalf of applicant Khalid Javed (CMA No.4/2012)

1. Mr. Rana M. Shamim, Advocate files undertaking to submit vakalatnama on the next date of hearing on behalf of the petitioner in C.P. No.84/2011. Mr. Salah-ud-Din Mengal, Advocate files vakalatnama on behalf of the petitioner in C.P. No. 82/2011. Mr. Muhammad Akram Sheikh, Advocate has filed notarized power of attorney stated to have been executed by Mr. Musawer Mansoor Ijaz ("Mr. Ijaz") in his favour, however, Syed Zahid Hussain Bokhari, Advocate, learned counsel appearing for Mr. Hussain Haqqani objects to the same and states that the same has not been consularized. Mr. Akram Sheikh states that consularized version of the said document will be produced by or before the next date of hearing and has placed reliance upon the case of

Muhammad Sarwar v. Abdul Ghani, 1980 CLC 946, and Khursheed Ali Jaffery v. Jameel-ud-Din Siddiqui, 1993 CLC 2511, to contend that if it is established that the counsel is genuinely and actually engaged he may represent a client and that oral authorization is also sufficient and that it is only for the person executing or not executing the vakalatnama to object to appearance by counsel. In view of the undertaking given by Mr. Akram Sheikh that consularized version of vakalatnama will be produced by the next date of hearing the objection need not to be decided at this juncture.

2. CMA No.6/2012: Mr. Akram Sheikh states that through this application, submitted directly by his client, extension of time for appearance as witness is sought.

He states that on account of the changed political scenario and a statement attributed to the Minister for Interior, Government of Pakistan published in major newspapers that a case under Article 6 of the Constitution of Islamic Republic of Pakistan may be registered against his client he has delayed his departure. Learned Attorney General strongly refutes the publication and states that there is no substance in it. Mr. Bokhari, Advocate states that reference to the said publication and the grounds taken in the application are without any substance and a mere pretext to delay the proceedings. He also questions the bona fides of Mr. Ijaz as till date he has not applied for a visa to come to Pakistan. Vide order dated January 9, 2012 the concerns of Mr. Ijaz, as expressed through his counsel, were attended to and the matter adjourned to a date as suggested by Mr. Akram Sheikh, Advocate.

In any event learned Attorney General having categorically denied the referred to publication and further reiterated and affirmed the undertaking given on the last date of hearing the apprehension of Mr. Ijaz appears misplaced. Mr. Akram Sheikh, Advocate should inform his client that this matter is being adjourned to a date proposed by Mr. Akram Sheikh, Advocate under instructions and as such he should be in attendance on the next date of hearing. Since Mr. Ijaz is represented by counsel, in future applications should be submitted through counsel with advance copies to learned Attorney General and Mr. Bokhari, Advocate. The same arrangements will also apply to applications submitted by the other parties. CMA No.6 of 2012 is therefore disposed of in the aforesaid terms.

3. Mr. Akram Sheikh, Advocate states that his client does not want to disclose his departure and arrival dates for security reasons and that the same should also not be disclosed by the Government of Pakistan. Learned Attorney General states that the matter of his departure from abroad and his arrival in Pakistan is not being inquired into and if the same comes to the knowledge of the Government the same shall not be disclosed and all that is required is that Mr. Ijaz be in attendance before the Commission on the next date of hearing. Learned Attorney General further states that Mr. Akram Sheikh should directly inform him in case his client is not satisfied with the security arrangements so that he can ensure that additional security arrangements can be put into place.

4. CMA No.1/2012: Mr. Bokhari, Advocate files reply to the application as well as reply to the Consent letter of Mr. Ijaz. Learned Attorney General files letter dated January 13, 2012 of the Consul General of Pakistan at Toronto enclosing copy of letter written by Mr. Fredrick M. Nesbitt, Director (Legal), Research In Motion Limited ("RIM") dated January 9, 2011 [sic] which refers to the notices issued by Secretary of the Commission, letter of learned Attorney General for Pakistan and letter to the Consul General of Pakistan Toronto dated January 3, 2012. RIM's letter concludes by stating that:

"Based on consideration of your letter, we regret to advise you that we are unable to satisfy your request. However, we understand that one or more of the

participants in the matter before the Court may be interested in making a request for certain records directly from RIM in the event of such a request, RIM will consider the user request in accordance with our policies and practices and may allow the customer to have access to data pertaining to their BlackBerry service for their own purposes, including use in this legal proceeding.”

Learned Attorney General also files copy of the letter received from Ms Iffat Imran Gardezi, Deputy Chief of Mission at Washington D.C., written in response to the acting Foreign Secretary communicating paragraph No.2 of the order dated January 9, 2012 regarding the retrieval of two BlackBerry hand sets of Mr. Husain Haqqani. The operative part of Ms Gardezi’s letter states that:

“No BlackBerry handset has been found either at the Ambassador’s Office or the Embassy Residence.”

CMA No.7/2012: Mr. Bokhari, Advocate files this application wherein the e-mail address and BlackBerry telephone numbers of Mr. Husain Haqqani have been disclosed, however, as regards the PIN umbers it is stated that Mr. Husain Haqqani does not have them as he does not have access to the two hand sets in his use and the same will be provided “on the availability of the hand sets”.

It is further stated that “PIN Numbers can be ascertained from the other side as well”. Mr. Bokhari, Advocate states that by the other side is meant Mr. Ijaz.

Extensive arguments were advanced by Mr. Sheikh and Mr. Bokhari on the CMA No.1/2012. Mr. Bokhari stating that there is nothing on record to establish that Mr. Ijaz has written and communicated to RIM the “Consent” earlier filed. In response Mr. Sheikh produced copy of an e-mail which according to him was received from Mr. Nesbitt dated January 10, 2012 stating that RIM is searching “for the responsive records” and that Mr. Ijaz’s counsel will be advised as soon as the search is complete and the records are compiled. Mr. Sheikh states that the reference in the e-mail is to Mr. Ijaz’s foreign counsel. On the other hand Mr. Bokhari opposes the genuineness of the said e-mail. In view of the fact that the said communication has not as yet been tendered in evidence, any objection thereto will be considered after filing of the document. Learned Attorney General states that he had not sent the copy of CMA No.1/2012 to RIM through Canadian High Commission as it was not so ordered in the order dated January 9, 2012, and further states that the objective of Mr. Ijaz has been served vide order dated January 9, 2012 and that we should await to hear from RIM as at the time of writing of letter dated January 9, 2011 [sic] RIM had not received the said “Consent” from Mr. Ijaz nor copy of order dated January 9, 2012 as Mr. Nesbitt does not refer to the same in his said letter. Learned Attorney General is directed to send a copy of this order along with a copy of the said “Consent” and earlier order passed by us to RIM through the Canadian High Commission at Islamabad and to submit responses received from RIM. In case RIM requires any further document or information to attend to the “Consent” of Mr. Ijaz with regard to the communication exchanged between the PIN Numbers mentioned in the Consent of Mr. Ijaz the learned Attorney General to provide the same to RIM and to immediately file copy of any such communication with the Commission. CMA No.1/2012 is disposed of in the aforesaid terms, but without affecting the right of any party to submit fresh application with regard to accessing the data /communication between the BlackBerry handset(s) of Mr. Ijaz and Mr. Hussain Haqqani.

5. Mr. Bokhari, Advocate has drawn our attention to the “prayer” made in his abovementioned reply to CMA No.1/2012, reproduced hereunder:

"A. It is respectfully prayed that the prayers made by Mansoor Ijaz being groundless not supported by any international law or principle of Civil Procedure Code or Q.S.O 1984, may graciously be dismissed.

B. It is therefore requested that the Commission may kindly formulate and prescribe its clear procedure so that such eventualities may not arise in future."

Mr. Bokhari placed reliance upon the case of Muhammad Gulshan Khan v. Secretary Establishment Division, PLD 2003 SC 102, and the following paragraph there from: "It is the bounden duty of the Courts to decide the cases on merits in accordance with law and the rules. The Courts, while dispensing justice, are duty bound to apply the provisions of law in their true perspective and application of the same cannot be avoided simply on the ground that the said provisions of law were not brought to their notice by the parties."

He has also referred to paragraphs 9(e), 9(f), 69 and 70 of the detailed order of the Hon'ble Supreme Court of Pakistan. Needless to state that this Commission has to abide by the Hon'ble Supreme Court's Order, which has both determined the scope of the probe and the manner in which it is to be conducted, inter alia mentioned in the referred to paragraphs of the Order. Moreover, there can be no denying that matters have to be determined in accordance with the law and the rules; the parties will however be at liberty to assist the Commission regarding the applicable law / rule at the appropriate juncture, consequently the query (described as "prayer") raised by Mr. Bokhari stands answered.

6. CMA No.5/2012: This application has been submitted by Mr. Bokhari, he however states that he is satisfied by the clarification given by Mr. Akram Sheikh and therefore he does not press the application which is accordingly disposed of. Mr. Bokhari further states that as he is satisfied with the statement of Mr. Sheikh he will also withdraw the complaint submitted to the Pakistan Bar Council against him.

7. In view of the report submitted by learned Attorney General that BlackBerry handsets are not available either at the Embassy or Residence of the Ambassador at Washington DC and as Mr. Husain Haqqani has already stated that he has no objection to the production of BlackBerry handsets, it would be appropriate to provide an opportunity to Mr. Husain Haqqani to submit an affidavit disclosing the following:

- i. The ownership of BlackBerry handsets that were in his possession and allegedly used at the relevant time.
- ii. When did he last use the said handsets?
- ii. Where were the said handsets left by him and where they can be found?
- iii. Whether a letter similar to the Consent letter submitted by Mr. Ijaz will be written by him.

Advance copies of the affidavit to be provided to the learned Attorney General and Mr. Akram Sheikh, Advocate. 8. CMA No.8/2012: Through this application Mr. Bokhari seeks: "Not to allow Mr. Musawer Mansoor Ijaz to leave Pakistan till the completion of the Commission proceedings." In support of the prayer it is stated that Mr. Husain Haqqani's "right of cross examination / further probe and rebutting of documents produced is not provided". Needless to state any witness who makes an adverse statement against a person such person will have full right of cross examining him and also provided with an opportunity to rebut the documents, if any, produced by him. In case the said witness absents himself from cross-examination an adverse inference may be drawn as per applicable

law. Mr. Akram Sheikh states that when his client gives evidence it will be the right of every person against whom he deposes to cross-examine him and to rebut the documents. Consequently, subject to the aforesaid observation the application is dismissed.

9. CMA No.9/2012: Through this application provision of certified copies of the order sheet and evidence is sought. The application is disposed of with a direction to the learned Secretary of the Commission to provide the same when applied for by parties.

10. CMA No.4/2012: This application has been filed by Raja Israr Ahmed Abbasi, Advocate on behalf of one Mr. Khalid Javed wherein, it has been prayed that:

“That proceedings and observations made by this Commission on 09.1.2012 about registration of case against Mansoor Ijaz may kindly be reconsidered for clarification and in this regard an appropriate order be passed to the effect that Justice of Peace can proceed / act in accordance with law and no prejudice would be caused to petitioner due to the proceedings by the Commission.”

“That it is also requested that the petitioner who is an aggrieved/affected person may also be allowed to join the proceedings of this Commission and be allowed to cross-exam all the relevant parties who depose before this Honourable Commission.”

Mr. Abbasi stated that the case which his client wanted to have registered against Mr. Ijaz does not pertain to the memorandum, the subject of the probe by this Commission, but with regard to certain articles written by Mr. Ijaz, however, no reference has been made to any article in the application nor in the application submitted before the learned Sessions Judge nor are the said article(s) attached with this application. It is further stated that Mr. Khalid Javed had sent a number of applications to Secretary, Ministry of Interior and Establishment Division, Government of Pakistan but these too have neither been mentioned in the application nor copies thereof have been attached with the application. The applicant has described himself in the following terms:

“the Petitioner is a patriotic citizen of Pakistan and a known political and social worker of Rawalpindi and has been putting my best efforts as an illustrious political activist for restoration and stability of democracy in the motherland, integrity and strength of the constitutional institutions and upholding fundamental rights of the countrymen”.

The learned Attorney General states that the application is not maintainable and he stands by his undertaking given on January 9, 2012 which is reiterated and affirmed. He further states that the application does not concern the Government of Pakistan. Mr. Bokhari supports the application and Mr. Akram Sheikh opposes the same. The applicant has not disclosed his interest in the present matter nor disclosed the particular act of Mr. Ijaz from which he is aggrieved or which can be categorized as a criminal act. In support of his application, the applicant states that he is a “known political and social worker” and audaciously describes himself as “illustrious”. Considerable time was taken up by the learned counsel in arguing the application by referring to irrelevant matters but without disclosing the interest which the applicant has in the matter and without reference to any law or precedent. It appears that the object of the applicant is to scare/threaten Mr. Ijaz from coming to Pakistan as he may be faced with criminal prosecution and or arrested. Such an attempt therefore can be categorized as an attempt to thwart the working of this Commission and the same will not be tolerated. The application is also tantamount to the review of the order dated January 9, 2012 and no ground for review of the same has been made out. The applicant wears his patriotism on his sleeve and describes himself as a known social worker. However, whilst

proclaiming his social worker status he did not cite any contribution made by him to society. The applicant further defines himself as illustrious which says a lot about him. Under the circumstances we are left to conclude that the application is misconceived and applicant is attempting to seek cheap publicity at the cost of others and may also be considered as an attempt to procrastinate and delay the work of this Commission. Accordingly the same is dismissed.

12. The matter is accordingly adjourned at the request of Mr. Muhammad Akram Sheikh, Advocate for January 24, 2012 at 09:00 a.m.