

2024 S C M R 1749

[Supreme Court of Pakistan]

Present: Qazi Faez Isa, C.J. and Naeem Akhtar Afghan, J

BILAL HAQUE---Petitioner

Versus

KAMRAN ALI AFZAL, SECRETARY, CABINET DIVISION, ISLAMABAD
and others---Respondents

Criminal Original Petitions Nos. 19 and 20 of 2024, decided on 17th August, 2024.

(a) Contempt of Court Ordinance (V of 2003)---

---S. 3---Constitution of Pakistan, Art. 204---Contempt of Court---Show cause notice, issuance of---Illegally running a restaurant in protected area of Margalla Hills National Park ('the National Park')---Alleged contemnor had voluntarily agreed to vacate the premises where he was running an illegal restaurant, however, instead of abiding by his statement, which was recorded in an earlier order of the Supreme Court, he initiated a media propaganda campaign against the Supreme Court projecting that it was the Supreme Court which was responsible for causing the suffering of all those employed by him in the restaurant by leaving them unemployed and that the absence of his restaurant would be a great loss to all his customers---Alleged contemnor propagated this by suppressing the fact that he was running the restaurant in violation of the law and by destroying the protected National Park---Alleged contemnor prima facie had disobeyed/ disregarded the earlier order of the Supreme Court and appeared to have committed a wilful breach of the valid undertaking given to the Supreme Court by him and had acted to bring the authority of the Supreme Court and the administration of law into disrespect and disrepute, and to lower the authority of the Supreme Court and scandalizing the judges of the Court in relation to their official work---Supreme Court issued show cause notice to the alleged contemnor to show cause why contempt proceedings should not be initiated against him with the directions that he should state whether he had reached out to his brother, who was the Cabinet Secretary, and had sought the issuance of the Notification regarding removal of the Chairperson of the Islamabad Wildlife Management Board and for the placement of the Wildlife Board under the Ministry of Interior/Interior Division, by removing it from the Ministry of Climate Change and Environmental Coordination.

(b) Rules of Business, 1973---

---Rr. 3(3), 10(1)(b) & Sched. II---Islamabad Wildlife Management Board('Wildlife Board') transferred from the Ministry of Climate Change and Environmental Coordination to the Ministry of Interior/ Interior Division---Legality---Rule 3 of the Rules of Business, 1973 ('the Rules') vests power in the Prime Minister to allocate business of the Federal Government amongst the different Divisions mentioned in Schedule II of the Rules---However, the business

which is allocated amongst the Divisions must have some nexus with the work of the Division and serve the public interest---Schedule II of the Rules, is enacted pursuant to R. 3(3) of the Rules and it lists the different Divisions, including the Establishment Division---Amongst the functions of the Establishment Division is the 'Review of organizations, functions and procedures of the Divisions' and that this be done 'with the objective of improving their efficiency'---Rule 10(1)(b) of the Rules states that 'a change in the allocation of business between various divisions of a Ministry' must not be done 'without previous consultation with the Cabinet Division'---In the present case two Divisions were rearranged without the involvement/approval of the Establishment Division and without consulting the Cabinet Division---Interior Division has many responsibilities, as set out in Schedule II of the Rules---To handover the Wildlife Board and the Margalla Hills National Park ('National Park') to the Ministry of Interior/Interior Division was not done with the objective of improving their efficiency---Wildlife Board and the National Park did not have the remotest concern with the workings of the Ministry of Interior/Interior Division, nor did it have any expertise or competence in attending to their affairs---Attorney General stated before the Supreme Court that the Memorandum dated 6 August 2024, through which the Wildlife Board was transferred from the Ministry of Climate Change and Environmental Coordination to the Ministry of Interior/Interior Division, has been withdrawn by issuing Memorandum dated 9 August 2024 and that the Wildlife Board shall continue to function under the Ministry of Climate Change and Environmental Coordination (and not under the Ministry of Interior/Interior Division)---Supreme Court after appreciating the fact that the Prime Minister had decided to withdraw the Memorandum gave directions that part of the Margalla Hills was in the province of the Khyber Pakhtunkhwa, therefore, the Provincial Government shall file concise statement under the signatures of the Chief Secretary, Secretary Forest and Director-General, Galiyat Development Authority, stating/disclosing the construction and projects which were being raised therein.

Umar Ijaz Gillani, Advocate Supreme Court for Petitioners (in both cases).

Hafiz Arfat Ahmed, Advocate Supreme Court, M. Ali Randhawa, Chairman CDA, Talat Mehmood Gondal, Member Environment, CDA and Naeem Dar, Director-General (Law), CDA for CDA.

Qasim Ali Chowhan, Advocate Supreme Court for MCI.

Shah Faisal Ilyas, Additional Advocate-General, KP. and Shahrukh Ali, D.G., Galiyat for Government of Khyber Pakhtunkhwa.

Shah Khawar, Advocate Supreme Court along with Saddique Anwar, CEO for Pine City.

On Court's notice:

Mansoor Usman Awan, Attorney-General for Pakistan.

Malik Javed Iqbal, Additional Attorney-General for Pakistan.

Anis Muhammad Shahzad, Advocate-on-Record.

Kamran Ali Afzal, Secretary Cabinet Division, Islamabad (respondent No. 1 in

CrI. Org. P. No. 19/2024)

Eazaz A. Dar, Secretary, Ministry of Climate Change and Environmental
Coordination, Islamabad (respondent No. 1 in CrI. Org. P. No.20/2024)

Date of hearing: 15th August, 2024.

ORDER

The learned Attorney-General for Pakistan ('AG') states that on behalf of the Federal Government he has filed Criminal Miscellaneous Application No. 1103 of 2024 which encloses a number of documents. He submits that the Notification whereby Ms. Rina Saeed Khan, the Chairperson of the Islamabad Wildlife Management Board (respectively 'the Chairperson' and 'the Wildlife Board') was removed has been withdrawn vide Notification dated 11 August 2024. The Chairperson we are informed worked for free, and had filed a petition before this Court drawing attention to the desecration and destruction of the Margalla Hills National Park ('the National Park'). On the other hand Mr. Luqman Ali Afzal had filed two petitions for leave to appeal wanting to continue illegally running a huge restaurant in the protected area of the National Park. Their interests collided. Coincidentally Mr. Luqman Ali Afzal is the real brother of Mr. Kamran Ali Afzal, the Cabinet Secretary. We are surprised that someone who voluntarily helped and assisted in the conservation, preservation and maintenance of the National Park was treated in this callous manner by removing her as Chairperson, while indulging those responsible for the destruction of the National Park.

2. Mr. Luqman Ali Afzal had voluntarily agreed to vacate the premises where he was running an illegal restaurant, however, instead of abiding by his statement, which was recorded in the order of this Court dated 11 June 2024, he initiated a media propaganda campaign against the Supreme Court projecting that it was the Supreme Court which was responsible for causing the suffering of all those employed by him in the restaurant by leaving them un-employed and that the absence of his restaurant would be a great loss to all his customers. He propagated this by suppressing the fact that he was running the restaurant in violation of the law and by destroying the protected National Park. Mr. Luqman Ali Afzal prima facie has disobeyed/ disregarded the order dated 11 June 2024 and appears to have committed a wilful breach of the valid undertaking given to this Court by him and has acted to bring the authority of this Court and the administration of law into disrespect and disrepute, and to lower the authority of this Court and scandalizing the judges of this Court in relation to their official work.

3. The matter from which these Criminal Original Petitions Nos.19 and 20 of 2024 emanate were filed stating that the order dated 11 June 2024 was being disobeyed/ violated. In paragraph 3 of the order it was noted that all those running restaurants in the National Park had voluntarily agreed to remove their respective restaurants within three months time. As a matter of indulgence, and since their voluntary removal of restaurant would help preserve and protect the National Park it was observed that if the law permits, they may be given preference in the leasing/

allotting/licensing of premises/land for their business by the Capital Development Authority ('CDA').

4. Therefore, show cause notice be issued to Mr. Luqman Ali Afzal to show cause why contempt proceedings should not be initiated against him. He should also state whether he had reached out to his brother, Mr. Kamran Ali Afzal, and had sought the issuance of the Notification regarding removal of the said Chairperson and for the placement of the Wildlife Board under the Ministry of Interior/ Interior Division, by removing it from the Ministry of Climate Change and Environmental Coordination. Mr. Luqman Ali Afzal should submit his reply in two weeks from the date of receipt of show cause notice.

5. The learned AG further states that the Memorandum dated 6 August 2024, through which the Wildlife Board was transferred from the Ministry of Climate Change and Environmental Coordination to the Ministry of Interior/ Interior Division, has also been withdrawn by issuing Memorandum dated 9 August 2024 and that the Wildlife Board shall continue to function under the Ministry of Climate Change and Environmental Coordination (and not under the Ministry of Interior/ Interior Division).

6. The learned AG submits that rule 3 of the Rules of Business, 1973 ('the Rules') vests power in the Prime Minister to allocate business of the Federal Government amongst the different Divisions mentioned in Schedule II of the Rules. However, the business which is allocated amongst the Divisions must have some nexus with the work of the Division and serve the public interest. Schedule II of the Rules, is enacted pursuant to rule 3(3) of the Rules and it lists the different Divisions, including the Establishment Division. Amongst the functions of the Establishment Division is the 'Review of organizations, functions and procedures of the Divisions' and that this be done 'with the objective of improving their efficiency'. Rule 10 (1) (b) of the Rules states that 'a change in the allocation of business between various divisions of a Ministry' must not be done 'without previous consultation with the Cabinet Division'. In the present case two Divisions were rearranged without the involvement/approval of the Establishment Division and without consulting the Cabinet Division.

7. The Interior Division has many responsibilities, as set out in Schedule II of the Rules. To handover the Wildlife Board and the National Park to the Ministry of Interior/Interior Division was not done with the objective of improving their efficiency. To state the obvious, the Wildlife Board and the National Park do not have the remotest concern with the workings of the Ministry of Interior/ Interior Division, nor does it have any expertise or competence in attending to their affairs. The learned Mr. Umar Ijaz Gillani states that he has attached documents with his contempt petitions that show the past practice of the Federal Government, which has always been to obtain prior approval of the Federal Cabinet before transferring any business from one Division or Ministry to another, but in the present case this too was not done.

8. On the last date (9 August 2024) we had directed Mr. Kamran Ali Afzal and

Mr. Eazaz A. Dar, respectively the Secretary Cabinet Division and the Secretary Ministry of Climate Change and Environmental Coordination to be in attendance. In response to our query Mr. Kamran Ali Afzal stated that the Notification removing

the Chairperson and the Memorandum which placed the Wildlife Board under the Ministry of Interior/Interior Division was done on the instructions of the Prime Minister, but a bit later contradicted himself and stated that it was done at the behest of the Ministry of Interior.

9. To ensure that the undertaking given to this Court and order dated 11 June 2024 is being complied with we direct CDA, through its concerned directorate, to visit all the said restaurants, take photographs and submit a report as to whether steps are being taken to dismantle the restaurants in the National Park, as the permissible three months are to expire soon.

10. With regard to the matter of 'Pine City' the learned Hafiz Arfat Ahmed who represents CDA states that he has filed Criminal Miscellaneous Application No. 1100/2024 wherein it is categorically stated that CDA has no concern with Pine City, which is situated in Makhniyal in the jurisdiction of the province of Khyber Pakhtunkhwa. He further states that the acronym and logo of CDA on the banners put up by Pine City was done without obtaining the approval or permission of CDA and the same was done to deceive the public, and upon coming to learn of this CDA has registered FIR No. 372/2024. We are surprised that all the officers of the CDA remained oblivious to the banners which had been put up in the heart of Islamabad, including on the Constitution Avenue and on the grill wall of Parliament, and only once the matter was brought to this Court's attention and notice was issued that CDA came to learn of it. Such neglect does not inspire confidence in the working of the CDA.

11. In Human Right Case No. 318 of 1993 vide order dated 19 May 2020, passed therein by a five-member Bench of this Court, it was ordered to stop all construction in the Margalla Hills, as under:

'1. At the outset, pursuant to the order of this Court dated 05.03.2020, it is stated by the Advocate General, Islamabad Capital Territory, Deputy Attorney General, Acting Chairman Capital Development Authority/Chief Commissioner, ICT that the whole of the Margalla Hills, spreading in Islamabad, K.P. and Punjab, has since long declared as a heritage site and National Park, and no part of it can be allotted to any private person, either for residential purposes or for any sort of commercial activity. We have been informed by the Acting Chairman, CDA that a large number of restaurants have been established in the Margalla Hills, amongst them Monal restaurant is a famous one, and there are rental residential premises by the name of Pine Residencia, Whispering Pine and some other residential premises constructed in the Margalla Hills which are being offered as hotels/guest houses, etc. and they are being advertised openly. It is stated that all these constructions are illegal and against the very spirit of the Margalla Hills being declared as a heritage site and National Park, and all such constructions and activities have to be stopped and demolished, and the Margalla Hills restored as heritage and National Park.

2. We are informed that a large number of trees have been removed and cut-

down for stated expansion of the Monal restaurant and the Acting Chairman CDA/Chief Commissioner I.C.T. is fully familiar with such situation and states that he has taken action on this occurrence and sealed the Monal restaurant. He has further assured the Court that the trees that have been cut-down or removed by Monal restaurant shall be restored with sufficiently tall and grown up trees. Action against all those premises, which are operating for commercial or residential purposes in the Margalla Hills be initiated to ensure their removal. We, however, direct that notices be issued to all the alleged owners/ occupants of the premises in the Margalla Hills who shall appear before the Court on the next date of hearing. The expansion or construction work of Monal or any other Restaurant or any other premises in the Margalla Hills is stayed altogether.'

Part of the Margalla Hills is in the province of the Khyber Pakhtunkhwa, therefore, we issue notice to the Government of Khyber Pakhtunkhwa and direct it to file concise statement under the signatures of the Chief Secretary, Secretary Forest and Director-General, Galiyat Development Authority, stating/disclosing the construction and projects which are being raised therein.

12. The learned Mr. Shah Khawar states that he represents the sole proprietor of Pine City, namely, Mr. Siddique Anwar ('Mr. Anwar'), and has filed Criminal Miscellaneous Application No. 1105/2024 which attaches a number of documents. He informs that Mr. Anwar is a tax payer and refers to the extract from the record of the Federal Board of Revenue ('FBR'), however, this document raises the question why against the name of Pine City the 'business address' is shown as '57-C C/O P P & A DTE GHQ'. No satisfactory answer was forthcoming in this regard. Instead Mr. Anwar states that he is a former Captain of the Pakistan Army, which he left in the year 1999, and conducts the business of real estate. Mr. Anwar in showing GHQ as his business address and himself as Captain raises the question whether this was done to mislead and/or to gain an advantage. Another document filed by him is a letter dated 11 June 2024 written by the Assistant Director Makhniyal of the Galiyat Development Authority, Government of Khyber Pakhtunkhwa. However, the Director General, Galiyat Development Authority, namely, Mr. Shahrukh Ali, states that they did not register Pine City instead through letter dated 11 June 2024 had asked for the 'relevant land documents (Fards)', but the same till date have not been provided. Mr. Anwar, however, states that he purchased 600 kanals of land from Raja Sikandar Zaman Khan in the year 2016 at a price of 350 million rupees and can produce documents in this regard. Mr. Anwar, however, undertakes not to raise any construction in the Margalla Hills under the name and style of Pine City or otherwise. Therefore, in view of Mr. Anwar's undertaking no further action in this regard need be taken by this Court regarding him or the Pine City. Needless to state that if construction is raised by him/Pine City the concerned authorities should immediately proceed to stop such construction, failing which they will be proceeded against.

13. During the hearing reference was also made to a business venture running under the name and style of Dinosaur or Dino Valley which is stated to be situated

in the Margalla Hills National Park that is within the province of Khyber Pakhtunkhwa. Therefore, notice be issued to the Government of Khyber Pakhtunkhwa which should provide details regarding the Dinosaur/Dino Valley, including of its owner(s), the permission granted to operate it together with photographs and aerial photographs of the area. Photographs and aerial photographs of the said Pine City area in Khyber Pakhtunkhwa be also filed.

14. Whilst it is to be appreciated that the Prime Minister had decided to withdraw the said Notification and the said Memorandum, but at the same time it brings into the question the manner in which things were managed and done. The Prime Minister will be well-served to consider whether Mr. Kamran Ali Afzal, the Cabinet Secretary, had advised him in the public interest or had failed to do so, and whether Mr. Kamran Ali Afzal had disclosed that Mr. Luqman Ali Afzal was his brother.

15. During the hearing reference was also made by the said Secretaries to the Islamabad Nature Conservation and Wildlife Management Act, 2023, however, it was pointed out that the same had not received the assent of the President. The learned AG to file a concise statement clarifying whether the same is a duly enacted law, and if it is then to ensure that it is published in the official Gazette. However, if he considers that it does not constitute law to submit written reason in this regard. For the time being the attendance of the said two Secretaries is not required.

16. All filings as mentioned above should be done in two weeks. To be listed thereafter.

MWA/B-4/SC Order accordingly.

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