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Advocate High Court

09th November, 2017

Secretary,
Cabinet Division,
Cabinet Secretariat,
Establishment Division,
Government of Pakistan,
Constitutional Avenue,
Islamabad.

SUBJECT: REPRESENTATION ON BEHALF OF THE CIVIL SOCIETY PERSONS I.E. PETITIONERS IN CONSTITUTION PETITION NO. 7097 OF 2016 [‘KARAMAT ALI & OTHERS VS. FEDERATION OF PAKISTAN & OTHERS’] AND CONSTITUTION PETITION NO. 131 OF 2017 [‘SHEHRI – CITIZENS FOR A BETTER ENVIRONMENT & OTHERS VS. FEDERATION OF PAKISTAN & OTHERS’] IN RELATION TO IMPLEMENTATION OF JUDGMENT DATED: 07-09-2017 OF THE HONOURABLE SINDH HIGH COURT

Dear Sir,

1. We act on behalf of the Civil Society Persons i.e. the Petitioners in Constitution Petition No. 7097 of 2016 [‘Karamat Ali & Others versus Federation of Pakistan & Others’] and Constitution Petition No. 131 of 2017 [‘Shehri – Citizens for a Better Environment & Others versus Federation of Pakistan & Others’]. The aforementioned Constitution Petitions were filed before the Honourable Sindh High Court in relation to the independence and autonomy of Sindh Police, including but not limited to, the illegal removal of Mr. A.D. Khowaja i.e. Inspector General of Sindh Police.

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Advocate High Court

2. That the Honourable Sindh High Court was pleased to pass the Judgment dated: 07-09-2017 in the abovementioned Constitution Petitions and the following paragraph is important and reproduced for your perusal:

"...What of the situation where either the Provincial or the Federal Government wish to remove an officer during the term of office? Here, the law enunciated by the Supreme Court in the Anita Turab case would apply. The relevant portion, para 22(ii), is again reproduced for convenience: "When the ordinary tenure for a posting has been specified in the law or rules made thereunder, such tenure must be respected and cannot be varied, except for compelling reasons, which should be recorded in writing and are judicially reviewable". Thus, if the Provincial Government (here meaning the Provincial Cabinet) seeks to surrender the incumbent to the Federation or otherwise remove him from the post, then the decision must be taken at a duly convened meeting of the Cabinet, and the agenda circulated for the same, which must set out the compelling reasons for which it is proposed to remove him. Proper notice must be given to the incumbent Inspector General and the relevant papers provided to him so that he can make a representation and, if he so desires, attend the Cabinet meeting to explain his position. If the decision is taken to remove or surrender the incumbent then the reasons for the same must be fully and duly recorded in the minutes of the meeting. The decision, along with the relevant record, must be transmitted to the Federal Government to which also the incumbent may make representations. The Federal Government must properly apply its mind to the situation. If it disagrees with the Provincial Government, namely that the stated circumstances or reasons are not compelling, then the incumbent cannot be removed or surrendered to the Federation. It is only if the Federal Government concludes that the circumstances or reasons are compelling that the incumbent can then be removed and/or surrendered to the Federation. And of course, as held by the Supreme Court, the entire exercise would be subject to judicial review. Furthermore, while the exercise is being carried out, neither the Provincial nor the Federal Government (either unilaterally or even acting together) can remove, surrender, recall or replace the incumbent, whether by way of an "interim" measures or otherwise. It must also be kept in mind that any replacement would not follow automatically at the behest or desire of the Provincial Government. This is so because once the post is vacated it must then be filled in as a collaborative effort in the manner as indicated above."

3. That to the shock and surprise of the Civil Society Persons and in line with the persistent contemptuous actions of the Sindh Government in defying binding Orders of the Honourable Sindh High Court, the Sindh Government has once again malafidely recommended the removal of Mr. A.D. Khowaja, Inspector

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General of Sindh Police, and has once again attempted to subvert the letter and spirit of the Judgment dated: 07-09-2017 passed in the abovementioned Constitution Petitions.

4. We are not aware about whether the mala fide decision/recommendation of the Sindh Government has been conveyed to you or not. Howsoever, we are making a representation on behalf of the Civil Society Persons, firstly because they were the Petitioners in the abovementioned Constitution Petition wherein the Honourable Sindh Court passed the Judgment dated: 07-09-2017 pursuant to which everything is happening. Secondly, the Civil Society Persons being the representatives in the abovementioned Constitution Petitions would be affected by any decision that is passed by the Federal Government on the mala fide recommendation of the Sindh Government.
5. That the Sindh Government has majorly based its recommendation on the reason that Mr. A.D. Khawaja, Inspector General of Sindh Police, has been appointed on OPS (own-pay-scale) basis and that the Honourable Supreme Court of Pakistan, through Order dated: 09-05-2014 passed in CPLA No.108-K of 2014, has issued directions that all Officers' posted on OPS basis should be returned to their substantive posts. The aforementioned basis of the recommendation is clearly mala fide and illegal for the following reasons:
 - a. Firstly, Mr. A.D. Khawaja was appointed on 12-03-2016 on OPS basis by the Sindh Government itself. It is pertinent to mention here that the Honourable Sindh High Court in Para 72 of the Judgment dated: 07-09-2017 has noted that "We are not unmindful of the point raised by the learned counsel for the Petitioners that the Respondent No.7 was appointed on OPS basis by and/or with the concurrence of the Provincial Government, and it does not therefore now lie with it to argue to the contrary."
 - b. Secondly, the Sindh Government has failed to provide any record of the aforementioned proceedings before the Honourable Supreme, including but not limited to the aforementioned Order dated: 09-05-2014, therefore, the applicability of the aforementioned Order dated: 09-05-2014 to the factual and legal position of the current controversy cannot be ascertained.

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6. That the Sindh Government has also based its recommendation on the reason that a BPS-22 Grade Officer, namely Mr. Sardar Abdul Majeed Dasti, is available so the position of the Inspector General of Sindh Police should be occupied by such Officer. It is submitted that this reasoning is a repeat of the Notification dated: 01-04-2017 through which the Sindh Government had earlier removed Mr. A.D. Khowaja with Mr. Sardar Abdul Majeed Dasti as Inspector General of Sindh Police and this very Notification was quashed by the Honourable Sindh High Court in Para 101(g) of the Judgment dated: 07-09-2017. Therefore, this is also a malafide reasoning given to subvert the Judgment dated: 07-09-2017 passed by the Honourable Sindh High Court.
7. In view of the above, it is submitted that the recommendation of the Sindh Government is clearly malafide, illegal and a deliberate attempt to subvert the Judgment dated: 07-09-2017 passed by the Honourable Sindh High Court. Therefore, it is requested that the recommendation of the Sindh Government shall not be approved by the Federal Government and the Judgment dated: 07-09-2017 of the Honourable Sindh High Court should be applied in its letter and spirit.

Thank you.

Sincerely,

Faisal Siddiqi
Advocate

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