

No. 104 / 1998

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M.D. Tahir Advocate vs. Federal Government etc

Special Appeal under Section 151 C.P.C. for suspension of operation of impugned order dated 2.5.1998

Affidavit of M.D. Tahir, Advocate, 10-Syed Miran Mauj Darya Road, Lahore.

The deponent do affirm and declare:

1. That the petitioner has filed titled appeal before this Hon'ble Court, grounds whereof may kindly be read as a part and parcel of this application.
2. That the petitioner has a good prima facie case in his favour, impugned order is unjustified, and erroneously writ petition has been dismissed.

That in case interim relief is not allowed, great miscarriage of justice will take place.

That balance of convenience lies in favour of grant of interim relief.

Verified on oath at Lahore on this 3.3.1998 that the contents of titled affidavit are true to the best of my knowledge belief and information.

Deponent.



Notarized by Mr. Oza-Ur-Rahman, District and Sessions Judge, Lahore. 3/3/98

them besides Motor-way and other appropriate parts of the country so to give them reward for their sacrifices given by them for Pakistan in 1947 and for their love, affection and relation with Pakistan and to save the future of their daughters, children, Ummat Mohammadi (PBUH) as our religion and traditions also teach us to help the mankind.

2. That detailed facts leading to the filing of the writ petition are mentioned therein for kind perusal of this August Court. Suffice it to say that in 1947 said Muslims migrated from Province of Bahar India to East Pakistan and they settled there. In 1971 during the fall of Dacca they did not accept the citizenship of Bangla Desh and in protest of separation of East Pakistan riots started wherein many Baharis were killed and they were dispossessed from their properties and since then they are living in camps and have been appealing to be transported to Pakistan as they are Pakistanis.

3. That writ petition came up for hearing before Mr. Justice Khalilur Rehman Ramday on 2.3.1998 and his Lordship was pleased to dismiss the same in limine with cost of Rs.5000/- to be paid by the petitioner.

Judge in Chamber inter alia on the following

G R O U N D S

- (a) That ~~the~~impugned order passed by the learned Single Judge, it is humbly submitted, is illegal, unjust against facts and record, and as such is liable to be set aside.
- (b) That the impugned order passed by the learned Single Judge in Chamber amounts to discourage the public probono writs, sympathy with humanity love and affection, brotherly feelings with mankind and war/struggle for independence fought by the Muslims of Indo-Pak since 1857 till 1947 resulting in establishment of Pakistan, an independent home land for Pakistani, where every citizen is enjoying fundamental rights and facilities.
- (c) That the discovery and verification of original Pakistanis in Bangladesh is function of respondents- or their counsel Deputy Attorney General and not the appellant/petitioner.
- (d) That all the Beharis/Pakistanis are registered in Bangladesh and lists thereof can be summoned by respondents from there and verified.
- (e) That the matter of Baharis-Muslims in



gained through press electronic media etc.

(f) That the finding and verbally informing to the petitioner that they are poor persons who cannot tolerate their expenses is not a justification to dismiss the writ petition.

(g) That the appellant was asked by the Hon'ble Single Judge how much expense he can contribute for meeting the expenses of Baharis-Muslim, the appellant informed his lordship that he may deposit Rs.25,000/- for the purposee.

(h) That the poor persons who are citizens of this country under the Constitution of 1962 are waiting for their arrival in Pakistan for the last 27 years since 1971, observation of learned Single Judge in Chamber that there are already crores of people in Pakistan is not justified.

(i) That the writ petition has been filed seeking enforcement of fundamental rights of those Muslims who are living in Camps just like prisoners and it was based on the press-news/survey report published in Daily Khabrain dated 27-1-98 and no rebuttal has been published from any corner/quarter of averments of special Edition attached with the writ petition as Annexure A. The petitioner/appellant filed the writ petition out of brotherly

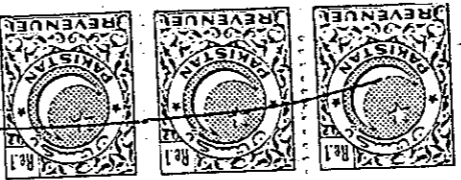
therefore, learned Single Judge was not justified in holding the writ petition as frivolous one.

- (j) That during the visit of Prime Minister to Bangladesh a few^{week}/_{back} this issue was discussed by Prime Minister of Bangladesh with him. Even during the last regime present Government took practical measures with the coordination of Rabta Alam Islami in bringing 432 families and they were settled near Mian Channu. There was no ill-will and mala fide on the part of the petitioner justifying dismissal of the writ petition and imposition of the costs. Impugned order is un-constitutional and un-Islamic.
- (k) That justice should not only be done but it should seem to have been done.

- (l) That learned Single Judge in Chamber did not consider the aspect that who gave sacrifices for Pakistan are confined illegally in camps and who had done nothing for cause of Pakistan are enjoying Government machinery-offices.

- (m) That there are lists of Pakistanis with Bangladesh Government which can be summoned from them by the respondents which will manifest the status of Baharis whether they are Pakistani Muslim or Ra Agent(Indian Agency), such remarks amount to shaken confidence of subject and love with the country.

- (n) That Baharis confined/residing in Camps are Pakistanis



Muslims, human being and are entitled to enjoy fundamental rights guaranteed by the Constitution of 1962. Afghan refugees were not only provided shelter permission to live and in Pakistan but help was also provided to them financially and morally.

(o) That 27 years have elapsed, Baharis living in Camps in Bangladesh have been claiming to be Pakistanis and they have not recognized the Bangladesh, they are still waiting to come to Pakistan, according to them and their childre, Pakistan is their homeland and Tabeer of their dreams.

(p) That imposing cost of Rs.5000/- to the appellant who has love with the country, with its citizens, with human beings and feels grievances of public his own grievance from Karachi to Peshawar and from the Village of Punjab, people sent their problems through letters through telephones to him and personally meet him and he has been taking pains for them by invoking the constitutional prerogative of this Hon'ble Court has amounted to discourage him. On the other hand in our neighbouring country India in such like public probono writ petitions costs are awarded to be paid by Government and given to the writ petitioners who institute the petitions for benefits of public at large.

question of enforcement of fundamental rights and lives of 2,25,000/- people, learned Single Judge was not justified in dismissing the same hurriedly on the same day, without calling for reports and comments from the respondents on the averments made therein so that this long standing pending question about the Baharis Muslims is resolved finally and effectively for all the time to come.

(r) That learned Single Judge was not at all justified in imposing costs upon the petitioner for the filing of this petition which has been filed with bona fide, on survey, report of the Daily News papers for the cause of human beings, which report/news has not been rebutted so far by any quarter. Impugned order is unconstitutional and harsh.

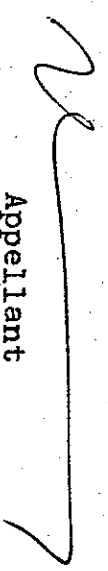
5. That petitioner has no other adequate and efficacious remedy but to invoke the ~~constitutional~~ appellate jurisdiction of this Hon'ble Court for redressal of his grievance.

It is, therefore, most respectfully and humbly prayed that the impugned order dated 2.3.1998 may kindly be declared as illegal, un-constitutional, unjustified, arbitrary and the same may be set aside. This appeal may graciously be accepted and the writ petition No.3585/98 may be allowed



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in terms of prayer made therein.

It is further prayed that pending the decision of this appeal, operation of the impugned order and direction of learned Single Judge for depositing Rs.5000/- as costs may kindly be suspended for sake of justice.


Appellant

(M. D. TAHIR ADVOCATE)

10-Syed Miran Mauj Darya Road, Lahore.

3.3.1998

Certified that this is first appeal against the impugned order dated 2.3.1998.


APPELLANT.