2012 S C M R 388

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J., Khilji Arif Hussain and Tariq Parvez, JJ

Mst. ROHAIFA---Petitioner

Versus

FEDERATION OF PAKISTAN through Secretary Ministry of Defence and others---Respondents

Constitution Petition No. 1 of 2012, decided on 10th February, 2012.

(a) Constitution of Pakistan---

----Art. 184(3)---Constitutional petition---Missing persons---Authorities, on the previous date of hearing, had been directed to produce seven such persons before the court, out of which four were reportedly admitted in a hospital and three were allegedly in an Internment Centre---Authorities had filed replies to the direction of the court but compliance of same had not been made---Effect---Detention of persons in Internment Centre would mean that they were in the custody of civil administration because a person cannot be kept in such Center without the sanction of the competent authority/Governor of the Province, and similarly other persons were in a civil hospital, therefore the civil administration ought to have inquired about them---Authorities had the responsibility of complying with the order of the court in letter and spirit and non-appearance of counsel of authorities suggested that reluctance was being shown from producing the said persons before the Supreme Court---Authorities were directed, severally and jointly, to ensure production of said persons before the Supreme Court in safe custody without fail on the next date of hearing---Order accordingly.

(b) Actions (in Aid of Civil Power) Regulation, 2011---

----Regln. 14---Constitution of Pakistan, Art. 184(3)---Constitutional petition---Missing persons---Oversight Board---Authorities, on the previous date of hearing, had been directed to produce seven detenus before the court, out of which three were allegedly in an Internment Centre---Authorities had filed replies to the direction of the court but compliance of same had not been made---Detention of detenus in Internment Centre would mean that they were in the custody of civil administration because a person cannot be kept in such Centre without the sanction of the competent authority/Governor of the Province---Notice was issued to the Governor, through the Chief Secretary to apprise the court as to whether in terms of Regln. 14 of the Actions (in Aid of Civil Power) Regulation, 2011, an Oversight Board had been constituted, and if it was, a report was to be procured from the Board to determine whether they

had visited the persons who were allegedly detained in the Internment Centre for the purpose of ascertaining their condition---Order accordingly.
Tariq Asad, Advocate Supreme Court for Petitioner.
Maulvi Anwar-ul-Haq, Attorney-General for Pakistan, Asadullah Chamkani, A.-G., KPK and Imtiaz Ahmad, DSP City, Peshawar on Court Notice.
Ch. Muhammad Yaqoob and J.S. Comdr. Muhammad Hussain Shahbaz, Director Legal, Ministry of Defence for Respondent No.1.
Raja Muhammad Irshad, Senior Advocate Supreme Court (absent) for Respondents Nos. 2 to 4.
Nemo for Respondent No.5.
Date of hearing: 10th February, 2012.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C.J.---In response to order dated 30-1-2012, four detenus, namely, Dr. Niaz Ahmad, Abdul Maajid, Gulroze and Abdul Basit, reportedly admitted in the Lady Reading Hospital, Peshawar (LRH) and Mazharul Haq, Shafiqur Rahman and Muhammad Shafique who are stated to be in the Internment Centre, Para Chinar have not been produced. Raja Muhammad Irshad, Sr. ASC had filed caveat on behalf of respondents Nos.2 to 4. Before Juma prayer, case was taken up and he was made to understand that the Court order has to be complied with, with a further direction to him to make arrangement for their production before the Court.

2. When the case was taken up again, in view of its importance, at about 5-00 p.m., Raja Muhammad Irshad, learned Senior Advocate Supreme Court was not in attendance. The learned Attorney-General for Pakistan, on our query, stated that at about 3-30 p.m., the former had informed him that the detenus who were in the Internment Centre, Para Chinar could not be brought as they had to cover a long distance while travelling from Para Chinar to Islamabad and at the same time, he informed that the detenus reportedly admitted in the LRH shall also be brought along with them. The learned Advocate-General, Khyber Pakhtunkhwa is also present in Court. He was asked to explain that if the statement/information so recorded by them is accepted to be correct, it means that the detenus are in the custody of the Civil Administration because the persons who are in the Internment Centre, Para Chinar cannot be kept over there without the sanction of the competent authority/Governor, Khyber Pakhtunkhwa. Similarly, the detenus in the LRH are in a civil hospital, therefore, the Civil Administration ought to have inquired about their detention over there. Imtiaz Ahmad DSP City, Peshawar appeared and stated that he had no knowledge of the admission/detention of the four above named persons in the LRH. Be that as it may, on the last date of hearing, Raja Muhammad Irshad, Senior Advocate Supreme Court, who appeared on behalf of respondents Nos.2 to 4 along with Ch. Muhammad Yaqoob Joint Secretary and Commander Muhammad Hussain Shahbaz, Director Legal, Ministry of Defence was directed to produce all the seven persons before the Court. Although reply has been filed, but compliance has not been made. Under the circumstances, we are of the opinion that it is the responsibility of respondents Nos.2 to 4, namely, Director-General ISI, Director-General, MI and Judge Advocate-General, JAG Branch, to comply with the order of the Court in letter and spirit. Non-appearance of their counsel also suggests that reluctance is being shown

from producing the detenus before the Court. This fact may not be out of context that initially when this case came up before this Court on 6-1-2011 statement was made by Raja Muhammad Irshad on behalf of respondents Nos.2 to 4 that the said persons had been taken from Adiala Jail for the purpose of trial under the Army Act. And reportedly, four persons, namely, Muhammad Amir, Tahseenullah, Said Arab and Abdul Saboor, in the meantime, had passed away. According to the learned counsel, dead bodies of two out of above four persons were handed over in the LRH while the third, namely, Said Arab was alive at that time, but he subsequently died in the LRH and his dead body was also handed over to his heirs. As far as the dead body of Abdul Saboor is concerned, his dead body was found lying in an ambulance parked near Haji Camp, Peshawar. Therefore, production of left over persons named above before the Court was all the more necessary. In the circumstances, we direct respondents Nos.2 to 4, severally and jointly, as well as the Chief Secretary, Government of Khyber Pakhtunkhwa, who is the head of the Civil Administration over there to ensure production of these persons before this Court in safe custody without fail on 13-2-2012.

3. The instant order be communicated to respondents Nos.2 to 4 through Secretary Defence. Copy of the process shall be collected by the representatives of the Ministry of Defence mentioned above from the office during the course of the day and after effecting service upon respondents Nos.2 to 4 they shall send compliance report to the Registrar.

4. In the meanwhile, notice be also issued to the Governor, Khyber Pakhtunkhwa through the Chief Secretary to apprise this Court as to whether in terms of Article 14 of the Actions (in Aid of Civil Power) Regulation, 2011 as to whether the Oversight Board had been constituted, and if so, he should procure report from the Board as to whether they had visited the persons who were allegedly detained in the Internment Centre for the purpose of ascertaining their condition. The Chief Secretary shall appear in person.

M.W.A./R-2/SC Order accordingly.

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