

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 927-02-2021

Khaliq Hussain

Versus

Ministry of Law & Justice

Date of Hearing: 22.12.2021

Fawad Malik: Information Commissioner

Present: Ahmed Raza Khan, Deputy Solicitor on behalf of the Ministry of Law & Justice.

A. APPEAL

1. Mr. Khaliq Hussain through an application dated 24-01-2021, under the Right of the Access to Information Act, 2018 addressed to the Secretary, Ministry of Law & Justice, Government of Pakistan has asked for the provision of the following information and record. The detailed particulars of the requested information are as follows:

“F.1/18/2009/SCA, Dated 30-09-2014 of Nadeem Chughtai, Assistant Registrar (admin), for Registrar, Supreme Court Pakistan, reached in Pakistan Information Commission, Islamabad dated 08-08-2019. (Copy Attached)

In this Connection, I need the Public Record of my above said letter, under the provision of Section No.14 of the Right of Access to Information Act, 2017, within 10 working days, after the receipt the above said application

- i. *“Attested copies of all letters of Law and Justice Division, sent to Registrar, Supreme Court of Pakistan, Referred in the above said letter dated 30-09-2014.*
 - ii. *Attested Copies of the PUC of Law and Justice Division, Islamabad on the above said letter.*
 - iii. *Attested copies of the initial order of Law and Justice Division, Islamabad, passed on the above said letter.*
 - iv. *Attested Copy of the Final Order Of Law and Justice Division , Islamabad passed on the above said letter”.*
2. Letter No. F.1/18/2009/SCA, Dated 30-09-2014 mentioned above reads as under:

From
The Registrar,
Supreme Court of Pakistan
Islamabad

To

The Secretary
Ministry of Law, Justice and Human Rights,
Government of Pakistan, Islamabad

Subject: NATIONAL ASSEMBLY/SENATE QUESTIONS

Reference: Law & Justice Division letters No. 486/2013-A-II dated 19.12.2013, Dy: No.F.249/2014-A-II dated 31.3.2014, No. F.4(43)/3014-D&L, dated 01.04.2014, No. 2965/2012-Sol-II dated 30.02.2014, Dy. No. 367/2014-A-II dated 05.05.2014, Dy. No. 372/2014-A-II dated 07.05,2014 and Dy. No. 657/2014-A-II dated 26.8.2014.

Dear Sir,

I am directed to state that the Preamble of the Constitution of the Islamic Republic of Pakistan, which is now a substantive part of the constitution by virtue of Article 2A, envisages that the independence of judiciary shall be fully secured. The mandate of Article 175 regarding the separation of judiciary from the Executive already stands fulfilled in light of judgement of the Supreme Court reported as Government of Sindh vs Sharaf Faridi (PLD 1994 SC 105). The Constitution has dedicated a full part (Part VII) comprising 4 chapters on "The judicature". The role of the legislators in the appointment of judges of the Superior Courts is delineated in the Constitution. Needless to mention that the Constitution contains a full-fledged mechanism of internal checks and balances on the working of the courts in the form of appeal, review etc. In this regard, Article 203b of the Constitution mandates the High Courts to supervise and control the Courts subordinate to them. As regards the working of the Superior Courts, the Constitution does not entrust such a function to any outside institution/other organ of the state, rather leaves it to such Courts themselves. It may be noted here that the Constitution does not envisage oversight in any form/manner by any other institution/organ of the State on the functioning of the Courts. This position may kindly be appreciated while dealing with the queries/questions received from the concerned quarters.

It is added here that the Superior Courts do publish Annual Reports on their working giving, amongst other things, the details of year-wise institution/disposal/pendency of cases for information of general public. Such reports as well as other necessary information pertaining to the composition of Courts, etc, are also available on the websites of the respective Courts.

Yours faithfully,

*NAEEM AHMED CHUGHTAI
ASSISTANT REGISTRAR (ADMN)
FOR REGISTRAR*

3. Feeling aggrieved for the non-provision of the requested information the instant appeal dated 21 February 2021 has been filed before the Pakistan Commission on access to Information.

B. PROCEEDINGS

4. The Section Officer (A.II) vide letter dated 2nd November, 2021 filed the reply on behalf of the Ministry of Law and Justice, Government of Pakistan. The same is reproduced hereunder with the prayer for the dismissal of the appeal:

“PRILIMINARY OBJECTIONS

The information required by the appellant relates to year 2014, whereas the statute of Right of Access to Information has been enacted in 2017, therefore, it cannot be applied retrospectively; hence the present appeal may be dismissed on this legal lacuna.

It is respectfully submitted that the applicant has filed the subject appeal before this Hon’ble Commission for provision of information regarding dual nationality, assets and plots of the Superior Court Judges. It is submitted in this regard that such information is not available with Law and Justice Division. Further the attested copies of correspondence and other ancillary documents etc. cannot be provided being exempted in terms of Section 16 of the Right of Access to Information Act, 2017.”

C. COMMISSION’S VIEW

5. The appellant through his request under the right of access to information has desired the information and record pertaining to all letters sent by Law and Justice Division, to the Registrar, Supreme Court of Pakistan, with reference to the above said letter dated 30-09-2014, copies of the PUC of Law and Justice Division and initial and final orders of Law and Justice Division passed on the above said letter. The answering organization in its reply and during the course of arguments has controverted the request arguing that the Right of Access to information Act enacted in 2017 cannot be applied retrospectively for the

information and record pertaining to the year 2014, that information related to the dual nationality, assets and plots of the Superior Court Judges is not available with Law and Justice Division and that the attested copies of correspondence and other ancillary documents etc. cannot be provided being exempted in terms of Section 16 of the Right of Access to Information Act, 2017.

6. Out of the divergent pleadings the following issues arise for resolve by the Commission:

Issues

- a. Whether the Right of Access to information Act enacted in 2017 cannot be applied retrospectively?
- b. Whether the information related to the dual nationality, assets and plots of the Superior Court Judges is not available with Law and Justice Division?
- c. Whether the correspondence and other ancillary documents thereto cannot be provided being exempted in terms of Section 16 of the Right of Access to Information Act, 2017?
- d. Whether the citizens has the privileged right to have access to the matters of public importance?

7. The issue wise comments and observations of the Commission are detailed as under:

Issue a.

The article 12 of the Constitution of Islamic Republic of Pakistan is reproduced for appraisal:

“12. Protection against retrospective punishment.

(1) No law shall authorize the punishment of a person-

(a) for an act or omission that was not punishable by law at the time of the act or omission; or

(b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.”

The bare reading of the article 12 depicts that recording of conviction and sentence in the criminal jurisdiction under the ex-post laws are prohibited therefore this article provides protection against the retrospective punishment in criminal matters whereas the appellant in the instant appeal has asked for the provision of the fundamental right under the right of access to information and record held by the public bodies enshrined under article 19A of the Constitution. The objection of retrospective implementation by the answering organization in the light of article

12 of the Constitution is neither relevant and logical nor impressive for the dismissal of the appeal.

The Right of Access to Information Act, 2017 does not bar the provision of the information and record, held by the public bodies, prior to the enactment of the Act. Section 16(k) of the Act specifically states that the record of the public bodies, after twenty years, will be made public nevertheless of the exemptions set out in the Act. Moreover the proviso to the section 5 of the Act mandating the proactive disclosure necessitates the information and record pertaining to the period earlier than the year 2008, to be published within reasonable time.

The Commission is of the view that the above stated facts negate the objection of retrospective applicability of the Act raised by the answering organization, hence is overruled.

Issue b & c.

Though the appellant has not directly asked the information pertaining to the dual nationality, assets and plots of the Superior Court Judges but the written reply submitted by the answering organization give an impression that the dual nationality, assets and plots of the Superior Court Judges are the subject matter of the letters sent by Law and Justice Division, to the Registrar, Supreme Court of Pakistan, in connection with to the above said letter dated 30-09-2014. The custody of record pertaining to the dual nationality, assets and plots of the Superior Court Judges has been denied by the organization in the reply. Be that as it may, the appellant has never asked for the said information directly and specifically rather has only demanded the letters sent by the Law and Justice Division, to the Registrar, Supreme Court of Pakistan, in connection with to the letter dated 30-09-2014. The organization has claimed exemption of the requested record under section 16 of the Act but has not specifically mentioned the sub section of the section which exempts the disclosure of the said information nor has provided any plausible reason in support of the claim that how the disclosure would harm the interest of any institution or that of an identifiable individual.

The Law & Justice Division letters No. 486/2013-A-II dated 19.12.2013, Dy: No.F.249/2014-A-II dated 31.3.2014, No. F.4(43)/3014-D&L, dated 01.04.2014, No. 2965/2012-Sol-II dated 30.02.2014, Dy. No. 367/2014-A-II dated 05.05.2014, Dy. No. 372/2014-A-II dated 07.05,2014 and Dy. No. 657/2014-A-II dated 26.8.2014 are mentioned in the letter dated 30.09.2014 by the Registrar, Supreme Court of Pakistan. The letter dated 30.09.2014 in fact is the reply to the above mentioned letters of the Law & Justice Division on the subject of National Assembly and Senate of Pakistan questions. If the letter dated 30.09.2014 by the Registrar, Supreme Court of Pakistan is made public than how the letters of Law & Justice Division, subject matter of the letter dated 30.09.2014 can be exempted from making public.

In view of the discussion above all the letters sent by Law and Justice Division, to the Registrar, Supreme Court of Pakistan, with reference to the letter dated 30-09-2014 by the Registrar, Supreme Court of Pakistan, copies of the PUC of Law and Justice Division and initial and final orders of Law and Justice Division passed on the said letter are public record in the light of the Act.

Issue d

Article 19A of the Constitution of Islamic Republic of Pakistan, 1973 read with the Right of Access to Information Act, 2017 enshrined the citizen of the country access to all information and record of public importance. This fundamental right cannot be denied or delayed due to beurocratic technicalities. Transparency in the working of the government departments is the essence for the enactment of the Act 2017. Its spirit is to ensure that the people of the Islamic Republic of Pakistan have access to the records held by the federal public bodies for making the government accountable to the people. This practice would improve the participation of the people in the public affairs aimed at reducing corruption, inefficiency, nepotism and misuse of authority and power in the governance.

D. ORDER

8. The appeal is allowed. The Deputy Solicitor/Designated Officer, Ministry of Law and Justice is directed to provide the appelland the requested information without any further delay but in any case not later than ten days of the receipt of this order.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 27.12.2021

Certified that this order consists of six (06) pages, each page has been read and signed.