

**IN THE SUPREME COURT OF PAKISTAN**

(Original Jurisdiction)

**Present:**

**Mr. Justice Jawwad S. Khawaja**  
**Mr. Justice Ejaz Afzal Khan**  
**Mr. Justice Maqbool Baqar**

**CMA No.592-K/13 in SMC No.16 of 2011, CMA No.423-K/14, Cr.O.P.24-K/14, CMA No.634-K/14, CMA No.359-K/14, Cr.O.P.Nos.25-K and 26-K/14, CMA No.360-K, 373-K, 382-K, 389-K and 394-K of 2014**

(For taking action against the Govt. of Sindh thr. IGP, Sindh on entering into contract for purchase of the APC Armed Personnel Carrier at an exorbitant rate without calling open tender in deviation of Sindh Public Procurement Rules).

Syed Mahmood Akhtar Naqvi ... Applicant(s)

**Versus**

Govt. of Sindh, etc. ... Respondent(s)

Applicant: Nemo.

On Court's notice Mr. Irfan Qadir, ASC

For Govt. of Sindh Mr. Meeran Muhammad Shah, Addl. A G Sindh

For the Chief Secretary Mr. Farooq H. Naek, Sr.ASC.

On behalf of IGP, Sindh: Mr. Ghulam Haider Jamali, IGP.  
Dr. Mazhar Ali Shah, AIG (Legal)

For HIT: Nemo.

Date of hearing: 26.03.2015

**ORDER**

**Jawwad S. Khawaja, J.-** When this case was called, we adverted to our previous order dated 12.3.2015. In that order we have noted the fact that there was no authorization in favour of Mr. Irfan Qadir authorizing him to appear in the case and nor was there any '*vakalatnama*' of an AOR on record on behalf of IGP Sindh. We can advert to our previous order wherein we had raised the query and asked the learned Additional Advocate General Sindh to inform us as to how and under what arrangement Mr. Irfan Qadir was representing the IGP Sindh. In our order, it has also been noted that Mr. Irfan Qadir had been appearing in this case for the last 12 dates of hearing. Considering that he has no authorization from any Advocate on Record, it is apparent that Rule 6 of Order IV of the Supreme Court Rules, 1980 has been violated. The said Rule stipulates that "*no Advocate*

other than an Advocate-on-Record shall appear or plead in any matter unless he is instructed by an Advocate-on-Record". Rule 15 of the said Order directs that "no Advocate other than an Advocate-on-Record shall be entitled to act for a party in any proceedings in the Court". Instead of acknowledging this short coming, Mr. Irfan Qadir conducted himself in a manner (discussed below) which indicates that he has been guilty of misconduct and conduct which is unbecoming of an Advocate. Through an earlier order we had provided an opportunity to Mr. Qadir to explain his position but he has chosen not to do so.

2. On 11.3.2015 we were constrained to note that when we commenced hearing of the case, "Mr. Irfan Qadir ASC purported to represent IGP, Sindh". When he was questioned as to whether Sindh Police was an entity recognized under Article 137 of the Constitution or the Rules of the Business of the Sindh Government under Article 139, instead of addressing the question, he raised his voice and starting saying loudly that he would not argue before this Bench. We were, therefore, compelled to note that this sort of behaviour is not conducive to the proper administration of justice and is also prohibited by the Legal Practitioners and Bar Councils Act, 1973. It is quite apparent that the conduct displayed by Mr. Irfan Qadir is also violative of Order IV Rule 30 of the Supreme Court Rules. Mr. Irfan Qadir stated as noted above, that he would not be arguing this matter before the Court. Despite this he once again interrupted Court proceedings today and launched into a harangue and tirade which has been recorded and the Office has been directed to prepare a transcript of the recording and place it on record. The persistent objectionable behaviour of Mr. Irfan Qadir provides good cause for taking strict action against him however, for the sake of ensuring fairness we had also given him notices to explain his conduct which, as noted above, he has not availed. This was quite sufficient to justify issuance of a notice to Mr. Irfan Qadir under Order IV Rule 30 of the Supreme Court Rules. The loud and unbecoming tone of his uncalled for and irrelevant interruptions can only be gathered from the audio recording. The Office shall save such recording as a part of the record.

3. Our staff have traced the record of some other cases from which it is apparent that Mr. Irfan Qadir may have been guilty of misconduct or conduct which is unbecoming of an Advocate. The first such case is of Ch. Muhammad Ashraf Gujjar vs. Riaz Hussain (2013 SCMR 161). In the cited case, it has been held at the very outset that a query was made from the Attorney General [Mr. Irfan Qadir] as to "whether it would be possible for him to conduct the

proceedings of this case, fairly, justly, honestly and in accordance with law when he at some stage remained counsel for the respondent [contemnor]". The reply of Mr. Irfan Qadir was that "in spite of that [he] would be able to conduct the prosecution of this case fairly, justly, honestly and in accordance with law". When the Court suggested that propriety demands that he should lay his hands off this case, Mr. Irfan Qadir replied by saying that "when he was on the Bench as a Judge of the Lahore High Court, he declined to hear one of the cases of the respondent on the said score but since the Attorney General being *persona designata*, is alone to conduct the proceedings in such matters, the fact that he at some stage remained counsel of the respondent can conveniently be ignored". The Court also had occasion to comment on the evident misconduct of Mr. Irfan Qadir as Attorney General by observing as to "how the Chief Justice of Pakistan could figure as a witness in the list of witnesses submitted by the Attorney General when he neither filed a complaint in his individual capacity nor submitted an affidavit". It was also noted by the Court that "even if it were so, the Chief Justice could not have been examined as a witness in view of the proviso to section 17 of the Contempt of Court Ordinance, notwithstanding the desire of the contemnor to cross examine him". Thereafter a very significant finding was recorded that Mr. Irfan Qadir as Attorney General was "acting more as a defence counsel than a prosecutor. ... His concerns, as far as it can be gathered from his conduct in the Court, aim at turning the table on the Court rather than preserving its dignity". It was also observed that "his partial and partisan attitude with pronounced leaning towards the respondent cannot be conveniently ignored". The partiality of Mr. Irfan Qadir as Attorney General as Prosecutor was duly noted and it was observed that such partiality was "patent on the face of the steps he has taken thus far during the proceedings".

4. The next case which has been traced by our research and office staff is that of Bank of Punjab vs. Haris Steel Industries (Pvt.) Ltd. (PLD 2010 SC 1109). In the cited case a three Member Bench of this Court noted that the Judges "were ... bemused rather shocked, at the grievance rather vociferously raised, not by the accused persons of this case but by the learned Prosecutor General Accountability, Mr. Irfan Qadir that the ... intervention by this Court in the investigation of the case in question, was an illegal and an unconstitutional interference by it which was likely to cause prejudice to the cause of the accused persons". It was also noted in the cited case that Mr. Irfan Qadir "admitted that he had been a counsel for the accused persons ... and that the said case was presently under investigation with none other than the NAB itself with Ministry of

*Law as their Administrative Ministry and with him [Irfan Qadir] as its Prosecutor General". The submission of Mr. Irfan Qadir was noted that "he was the one who had filed all the cases on behalf of the accused persons of the said fraud case in the Lahore High Court and even in this [Supreme] Court". The Court also recorded in the judgment that "he [Irfan Qadir] was the one who had engaged some other senior Advocates also to represent the said accused persons in the High Court and in this Court at that time not because he wanted so to do but because the said accused persons had desired that he should also associate some senior Advocates with him who enjoyed influence with the Judges of the High Courts and of the Supreme Court and that it was in deference to the said desire of his said clients that he had engaged Syed Sharifuddin Pirzada, Mr. Waseem Sajjad and Mr. Babar Awan, Advocates to represent the said accused persons in the said cases. He, however, denied the allegation that he had taken any money from his said clients for any collateral purposes or that he had misappropriated any part of any money given to him by his said clients for onward payment to the said learned Advocates". To put it mildly, this type of conduct brings the noble profession of lawyers into disrepute and undermines honour, prestige and dignity of the two institutions of the Bar and the Courts.*

5. There is yet another case reported as Arsalan Iftikhar vs. Riaz Hussain (PLD 2012 SC 903). A number of instances showing Mr. Irfan Qadir as being *prima facie*, guilty of misconduct or conduct unbecoming of an Advocate are evident. The first 10 paragraphs of the cited judgment which highlight such conduct are being reproduced to the extent relevant, for ease of reference:-

" ...

2. Our judgment dated 14.6.2012 had been passed after considering the concise statements submitted by the parties and after hearing their learned counsel. The relevant part of our judgment on which the hearing of this petition is mainly focused is para 22 which, for ease of reference, is reproduced as under:-

*"While this suo moto action has been brought to an end in view of the material considered above, [Mr. Irfan Qadir] the learned Attorney General who has assisted us in this case is fully abreast of all aspects of this case. It is our expectation that he will set the machinery of the State in motion so that all those who may have committed any illegal acts, including Malik Riaz Hussain, Dr. Arsalan, Salman Ali Khan etc. are pursued and brought to book with the full force and rigour of the law".*

3. It has been brought to our notice through the present proceedings that [Mr. Irfan Qadir] the Attorney General wrote a letter to the Chairman, NAB on 18.6.2012, purporting to be in furtherance of para 22 our judgment of 14.6.2012.

*Learned counsel for the petitioner has taken us through the said letter which was placed on record by the learned Deputy Attorney General. According to learned counsel, instead of abiding by para 22 ibid [Mr. Irfan Qadir] the learned Attorney General has transgressed the terms thereof and has exerted illegal and unwarranted influence over NAB. The contents of the letter dated 18.6.2012 written by [Mr. Irfan Qadir] the Attorney General will be considered shortly. It may be noted that the [Mr. Irfan Qadir] learned Attorney General was not a contesting party in the case and was only assigned the limited function, as an officer of the Court and as the principal law officer of the Federation, of setting the machinery of State in motion.*

4. *The main allegation leveled by the petitioner against [Mr. Irfan Qadir] the Attorney General is that he acted in a partisan manner and influenced NAB to favour the respondent Malik Riaz Hussain. To support his contention, learned counsel for the petitioner drew our attention to Writ Petition No. 258 of 2007 which was filed in the Lahore High Court by nine petitioners against a number of respondents including Malik Raiz Hussain who was arrayed as respondent No. 7. The Writ Petition and other documents filed in the case have been placed on record. Mr. Irfan Qadir (now Attorney General) represented Malik Riaz Hussain in the said Writ Petition. He filed parawise comments and appeared in Court on various dates of hearing on behalf of Malik Riaz. The learned DAG, upon being questioned, stated that as per his information, [Mr. Irfan Qadir] the Attorney General did act as counsel for the respondent Malik Riaz Hussain in the said Writ Petition. Learned counsel representing Malik Riaz Hussain interjected at this point and contended that there was nothing wrong or improper if Mr. Irfan Qadir represented the respondent as his client in the case. ...*

5. *There is indeed no impropriety if an Advocate represents a client in any given case. Learned counsel for the respondent is, however, missing the point of the petitioner's objection. The objection is not to the fact that [Mr. Irfan Qadir] the Attorney General, in his private professional capacity represented the respondent. The allegation being made is that neither during the course of hearing of SMC No.5 of 2012 nor when our judgment was announced in Court on 14.6.2012 nor at any time thereafter [Mr. Irfan Qadir] the Attorney General disclosed to the Court his association or professional relationship with the respondent. It is quite clear that we would not have tasked [Mr. Irfan Qadir] the Attorney General with any responsibility in this matter if he had made disclosure to us as to his professional association with the respondent Malik Riaz Hussain. It is of concern to us that [Mr. Irfan Qadir] the learned Attorney General did not make the requisite disclosure.*

6. *Learned counsel for the petitioner contended that the above facts provide substantiation in respect of a number of allegations which have been made against [Mr. Irfan Qadir] the Attorney General in this petition and which were reiterated during the course of arguments. The primary objection in this respect is that [Mr.*

*Irfan Qadir] the learned Attorney General through his letter of 18.6.2012 sent to NAB, went much beyond the scope of our order of 14.6.2012 and this amounted to interference with and unlawful influence on the inquiry by NAB and also constituted failure on his part, to abide by our order. ...*

7. ...

8. *The foregoing facts which are floating on the surface of this record provide prima facie evidence that NAB may have wilted under the outside influence of [Mr. Irfan Qadir] the Attorney General and may, therefore, not be in a position to conduct an impartial inquiry in the matter. We may add that when we passed our order dated 14.6.2012, we had no reason to believe that [Mr. Irfan Qadir] the Attorney General will go beyond the simple and limited act of "setting the machinery of the State in motion". It is, therefore, disturbing to see that he chose to write a letter in terms reproduced above thus overstepping the remit of our order.*

9. *In addition to the above, the unusual conduct of [Mr. Irfan Qadir] the learned Attorney General in these proceedings has previously been subject of comment by us. In our order dated 24.7.2012, we noted that Mr. Shafi Muhammad Chandio, learned DAG had undertaken on 17.7.2012 that he will file in Court the letter sent by [Mr. Irfan Qadir] the learned Attorney General to the Chairman, NAB. The DAG failed to file the same despite the lapse of several days. We also noted that such failings impeded the administration of justice and could not be approved. Expressing our disappointment, we had asked Mr. Chandio, learned DAG to appear and inform us of the reasons, if any, for not abiding by his undertaking, but were informed that he was unavailable. We, therefore, recorded in our order that we were "surprised and somewhat taken aback when [Mr. Irfan Qadir] the learned Attorney General became agitated at this and made remarks that the Court was taking undue interest in this case, implying that this was not appropriate. In the same agitated state he also remarked that there were sensitivities to this case. We are in particular surprised at the attitude of [Mr. Irfan Qadir] the learned Attorney General because he was not present on the last date of hearing. Instead of putting his own office in order, it is clear that he had not been briefed by the learned DAG in respect of what transpired at that hearing". We had also commented that [Mr. Irfan Qadir] "the learned Attorney General may be careful in maintaining the decorum of these proceedings being an officer of the Court in addition to being the principal law officer of the Federation". Perhaps the above facts which have now been brought to our attention, can help explain [Mr. Irfan Qadir] the Attorney General's unusual conduct in the case.*

10. *The effect prima facie, of the foregoing circumstances whether taken independently or cumulatively is that there is a reasonable and well founded prima facie basis for the petitioner's allegation that [Mr. Irfan Qadir] the Attorney General did not act fairly and impartially while purporting to act in furtherance of para 22 ibid reproduced above. Since these are matters of serious concern to us and also would be to [Mr. Irfan Qadir] the Attorney General as a member of our bar, it*

*would be in the interest of fairness and justice if he is provided an opportunity of hearing to explain his conduct. The office shall, therefore, create a file and issue notice to [Mr. Irfan Qadir] the Attorney General”.*

6. We are quite surprised that although we had directed Mr. Irfan Qadir as Attorney General to “*set the machinery of State in motion*” against persons such as Malik Raiz Hussain, Dr. Arslan, Salman Ali Khan etc. so that they are pursued and brought to book, Mr. Irfan Qadir chose not to disclose to the Court that Malik Riaz Hussain had been his client and as such in Writ Petition No. 258 of 2007, Mr. Irfan Qadir had represented Malik Raiz Hussain. It is because the requisite disclosure of such relationship had not been made that the Court entrusted him with a sensitive job. We duly noted that “*we would not have tasked [Mr. Irfan Qadir] the Attorney General with any responsibility in this matter if he had made disclosure to us as to his professional association with the respondent Malik Riaz Hussain*”.

7. To date Mr. Irfan Qadir has chosen not to respond to the notice issued to him and to explain the behaviour which, on the face of it, is unethical. We can, therefore, justifiably proceed on the basis that he has no explanation to offer. This should particularly be of concern to both Bar and Bench as any dispassionate and objective analysis of the situation will demonstrate that such conduct cannot be conducive for an effective and fair justice system.

8. From the above instances, it is evident that Mr. Irfan Qadir has made it a habit to indulge in misconduct or conduct unbecoming of an Advocate. In the interest of fairness and justice, we had provided an opportunity of hearing to Mr. Irfan Qadir to explain his conduct. Although this was done as far back as 28.8.2012, and once again on 12.3.2015 Mr. Irfan Qadir has chosen not to give any explanation in writing or otherwise. From this we can only assume that he has in fact no valid explanation to give.

9. In addition to the above, in the case of Hamid Mir vs. Federation of Pakistan (Constitution Petition No.105/2012), we had passed an order wherein we noted as under:-

*“[The petitioner] drew our attention to CMA No. 4041/2012 which was submitted by the Ministry of Information and Broadcasting. Page 2 of this CMA bears a heading “Supplementary grants allocated to the M/o Information and Broadcasting for financial year 2011-12”. The petitioner then adverted to the first column of table appearing under the above heading and submitted that the original grant in the various heads described in the table was Rs.4,080,076,000/-. This figure when written in words comes to Rupees four billion, eighty million and seventy six*

*thousand and when written in vernacular, the figure comes to Rs. 4 arab, 8 crore and 76 hazar. While the petitioner was addressing the Court, the Attorney General [Mr. Irfan Qadir] interrupted the proceedings and has started contentious argument and a mindless harangue as to the figure. We are surprised at this interjection when the figure being given by the petitioner is absolutely in accordance with the table at page 2 of CMA No. 4041/2012 submitted by the Ministry of Information and Broadcasting itself.*

3. *We repeatedly informed the Attorney General [Mr. Irfan Qadir] that this was not the way in which cases are to be heard. And we also repeatedly asked him to take his seat. Instead of doing so, he continued with his interruption and obstructed the Court proceedings. This is not something which should be countenanced as it is not conducive to the administration of justice. If such conduct is allowed to continue it will undermine the legal system. We are, therefore, constrained to warn the Attorney General that he should not interrupt the arguments being advanced by the other side and instead he should, in accordance with established norms and practice expected from all members of our Bar, reserve his comments and address the Court on his own turn”.*

We also noted that valuable time of the Court had been unnecessarily wasted and as a consequence, the aforesaid warning had been given to Mr. Irfan Qadir as Attorney General.

10. The above are persistent acts on the part of Mr. Irfan Qadir which display a pattern and a mindset which is not at all conducive to the honour and dignity of the Court and the Bar. A fair, honest and ethical Bar is essential for dispensation of justice. The Court has shown a lot of patience in dealing with Mr. Irfan Qadir but he has failed to uphold and maintain the dignity of his profession or the Court. Therefore, in order to maintain the honour, respect and dignity of the Bar and the Court, we find ourselves compelled to suspend the practicing license of Mr. Irfan Qadir as an Advocate of this Court and he is also given notice to show cause as to why he should not be removed from practice as an Advocate of this Court.

11. We can now take up the case at hand. The Inspector General of Police, Sindh is in attendance pursuant to our previous order dated 12.3.2015. He has submitted a report (CMA 1445/15). However, still we require additional information as to the deliberations, if any, which may have taken place to justify hiring of Advocates other than the Advocate General and law officers from his office. We have also not been able to ascertain from the IGP or from his report as to the amount which was paid as professional fee. Upon being questioned, the IGP has stated that a total sum of Rs.30 lakhs was agreed to be paid to Mr.



Irfan Qadir out of which a sum of Rs.20 lakhs has already been paid while the remaining Rs.10 lakhs is outstanding and payable. The Government of Sindh and IGP Sindh shall file copies of all relevant documents showing deliberations and justification for engaging counsel other than from the office of Advocate General Sindh. The case shall be listed for hearing in the 2<sup>nd</sup> week of April, 2015. On the last date of hearing Mr. Farooq Naek had candidly conceded that the Agreement dated 15.3.2013 was not in accordance with the provisions of the Constitution or the Sindh Rules of Business. Consequently, the Agreement was declared to be null and void.

12. Today CMAs Nos. 423-K and 394-K of 2014 have also been listed for hearing relating to acquisition of Fire Tenders and one helicopter by the Sindh Government. At the request of Mr. Farooq H. Naek, Sr. ASC, these two CMAs shall be delinked from the main case and shall be listed for hearing after 30 days as requested by him.

**Judge**

**Judge**

**Judge**

**Islamabad, the**  
26<sup>th</sup> March, 2015

*M. Azhar Malik*