

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.3057-P/2021

Arshad Sohail son of Abdul Rasheed Khan,
r/o House No.177 Mohallah Rasheed Town,
District Peshawar.

Petitioner (s)

VERSUS

Government of Khyber Pakhtunkhwa
Through Advocate General Peshawar and others.

Respondent (s)

For Petitioner (s) :-
For Respondent (s).

Mr. Adil Anwar Jehangir, Advocate.
Mr. Sardar Ali Raza, AAG along with Umer
Sadique AD (complaint) and Ashraf Ilyas Khattak
DD (Tech) for respondents No.1 to 6.

Date of hearing:

21.04.2022

JUDGMENT

ROOH-UL-AMIN KHAN, J:- By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Arshad Sohail, the petitioner, seeks issuance of the following writ:-

“It is, therefore, humbly prayed that on acceptance of this writ petition, a writ of mandamus may kindly be issued directing the respondents to complete the process on the application filed by the petitioner in the year 2018 dated 30.07.20198 and lodge the FIR against the concerned revenue officials against which the complaint/application is pending since 2018. OR

Any other relief justified in the given facts and circumstances of the case but not

specifically prayed for may also please be allowed.”

2. As per averments in the writ petition, Abdul Rauf (late) brother of the petitioner being a Director of M/S Ishrat Cinema Private Limited, prepared a fake and bogus general power of attorney in favour of Muhammad Iqbal (added respondent No.7). The said power of attorney was revoked after demise of Abdul Rauf on 15.09.2015. Grievance of the petitioner is that despite revocation of the general power of attorney, Muhammad Iqbal transferred property of the Cinema through twenty different mutations, on which open inquiry was initiated in the year 2018 by the Anti-corruption Establishment Khyber Pakhtunkhwa Peshawar, wherein investigation was conducted and completed but despite that the Assistant Director Revenue/Tehsildar Anti Corruption Circle Peshawar/respondent No.4 is not forwarding findings of the Enquiry Officer to the Incharge Anti-Corruption Circle Peshawar.

3. Initially pre-admission notice was issued to respondents No.3 to 6. During arguments it surfaced that large number of open enquires are pending before the Anti-corruption Establishment since long and in the instant case too the respondents have held the enquiry proceedings against added respondent No.7 on the complaint of the petitioner in abeyance without any plausible reasons. On 08.12.2021, Bostan Khan Sub-Inspector (S.I) Anti-Corruption Establishment when confronted with the lethargic attitude of the Anti-Corruption Department, he stated that enquiry on the complaint of the petitioner is complete which has been

referred to the Assistant Director Revenue Anti Corruption/respondent No.4 for technical opinion but the same has been returned with certain objections. He sought time to remove the objections and resubmit it before respondent No.4 for final technical opinion. Since, we have faced the same situation in so many cases as such keeping in view the lethargic attitude of the Anti-Corruption Authorities; the Director Anti Corruption Circle Peshawar, was directed to submit report about all pending enquiries in the Office of the Anti-Corruption Establishment, Khyber Pakhtunkhwa.

4. On the next date of hearing i.e. 09.03.2022, report with regard to pending enquires was submitted by the Director Anti-Corruption, according to which total 1992 enquires are pending with the Anti-corruption Department of the Province since August 2014. While explaining the situation, the Director stated that most of the enquires could not be completed due to non-cooperation of the Government departments like PDA, Sports/Tourism, C&W and Universities etc. He further stated that some enquires have been kept pending on the directions of unknown high ups of the Provincial Government. In view of the statement of the Director Anti-Corruption, the worthy Inspector General of Police (IGP) and the worthy Secretary Establishment Department Government of Khyber Pakhtunkhwa were directed to look into the matter and submit a detailed report about the wrong doing in the Anti-corruption Department of the Province, particularly, regarding the

pending enquires since 2014 against different departments of the Province.

5. The requisite report was submitted by the IGP, KP Peshawar wherein 1962 enquires are shown pending with the Anti-Corruption Department till 20.12.2021 with the following break-up:-

Teaching wing	Audit Wing	Revenue	Misc.	Total
397	583	103	879	1962

Scarcity of man power, non-cooperation of the Government Institutions, non-provision of record to the concerned Enquiry Officer and lack of deployment of technical expertise in the investigation staff are shown main reasons for snail pace work of the Anti-corruption Establishment. It was also emphasized in the report that the Ant-corruption Establishment is an attached department of the Establishment Department of Government Khyber Pakhtunkhwa, as such it has been placed under the administrative control of Secretary to Establishment department, whereas the office of the Inspector General of Police has no nexus or concern with the enquires or investigation conducted by the officials of the Anti-corruption Establishment.

6. In compliance of order of this court, the Director Anti-corruption Establishment Khyber Pakhtunkhwa, Peshawar, has also submitted a report, wherein it was pleaded that in consequence of this court order, the Anti-corruption Establishment has constituted four Regional Scrutiny Committees for the purpose of scrutinizing

the enquiries (especially old enquiries) in order to reduce the pendency. To this effect office order has been issued addressing all the Assistant Directors Crimes, Circle Officers along with allied staff to attend the office of Directorate of ACE, Peshawar w.e.f. 10.03.2022 till further order including weekend as well i.e. 12th & 13th March, 2022 to hold meetings with the Scrutiny Committees. Similarly, five Regional/District Committees consisting of Senior Auditors and Technical Officers have also been notified for the disposal of cases requiring Audit & Technical Inspections with direction to complete the process within a period of ten days and submit inspection reports before 25.03.2022. He provided a list of disposed off open enquiries since 09.03.2022 to 30.03.2022, according to which almost 296 enquires have been disposed off in different districts of the Province within twenty-one days. We have noted that after holding consecutive meetings by the Scrutiny Committees, the figures of pending enquires have been reduced within a short time of twenty-one days, however, the numbers of pending enquires are still stand at an alarming situation which requires to be completed expeditiously. The delay in conclusion of the enquires shows the lethargic attitude and conduct of the Anti-corruption officials, most particularly, the Enquiry Officers, who have unnecessarily shelves a lot of enquiries without any progress for no plausible explanation. The Khyber Pakhtunkhwa Anti-corruption Establishment Rules, 1999 (“**Rules of 1999**”) provides a mechanism for preliminary/open enquires against the public servant initiated by the establishment on a complaint received from

government, head of the department or other reliable source. Rule 3(s) of the Rules of 1999 make it incumbent on the Head of the concerned Department/Office to provide the relevant record required in connection with requires/investigations as soon as a request is made by the Establishment. Rule 6 of the Rules of 1999 provides time limit for completion of preliminary/open enquires and investigation which accentuate for its completion within one month and two months respectively. For better understanding rule 6 of the Rules 1999 is reproduced below:-

“6. Time limits for completion of preliminary/open enquires and investigations:- Preliminary/open enquires and investigation of the case shall be completed within one month and two months respectively.

Provided that the aforementioned time limit may be extended by the competent authority as mentioned below if reasonable ground exist for such extension:-

- (a) Public Servants in BPS.18 and below: Director
- (b) Public Servants in BPS.19 & above. Chief Secretary

7. The above quoted rule manifestly provides that if an enquiry or investigation could not be completed within one month and two months, the time may be extended by the Director or the Chief Secretary, as the case may be, **if reasonable grounds exist.** The provisions of Police Rules 1934 for the purpose of enquiry/investigation of offence specified in Schedule attached to Anti-corruption Establishment Ordinance, 1961 has been made fully applicable to the enquires and investigations. The Director Anti-corruption is vested with the powers to suo moto call for record of any case/enquiry pending investigation with the Establishment, examined it and rendered such direction as may be

necessary for speedy and just disposal of the same. Similarly, the Chief Secretary is also vested with the same power to call for record of any case/enquiry for the purpose of satisfying himself as to the correctness of the decision taken under clause (a) of rule 8 of the Rules *ibid.* and may pass such order as deem appropriate.

8. In view of the report submitted by the Anti-corruption Establishment KP Peshawar, in the case in hand, enquiry against Muhammad Iqbal/added respondent No.7 has been dropped and closed, hence, registration of FIR has not been proposed by the Enquiry Officer, as such this writ petition has served its purpose which is disposed of accordingly. However, we have noted with great concern that despite clear Law and Rules on the subject the Anti-corruption Establishment has kept pending a large number enquires on lame excuse of non-availability of the Audit & Technical Experts or non-cooperation of the departments notwithstanding the fact that the Rules of 1999 equipped the Anti-corruption Officials to requisition record from any department of the Provincial Government. The Director Anti-corruption Establishment KP Peshawar as well as the worthy Chief Secretary Government of KP Peshawar have also not adhered to rule 22 of the Rules of 1999, whereby they have respectively been empowered to look into the pending enquires and investigation. It is expected that the Director Anti-corruption Establishment and the worthy Chief Secretary shall adhere to the rules of 1999 in letter and spirit and shall make the Scrutiny Committees and Enquiry Officers are duty bound for expeditious disposal/conclusion of

pending enquires and investigation in the Anti-corruption cases, most particularly, within the statutory period provided in the Rules of 1999. The Director Anti-corruption shall also submit compliance report of disposal of pending enquires and investigation to this Court through the Additional Registrar (Judicial) within six months from the date of the order.

9. The Additional Registrar (Judicial) of this court shall send copy of this judgment to the Director Anti-Corruption and the worthy Chief Secretary Khyber Pakhtunkhwa Peshawar for onward compliance.

Announced:

21.04.2022

M.Siraj Afridi CS

Senior Puisne Judge

JUDGE

DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge;
Hon'ble Mr. Justice Shakeel Ahmad