

THE  
PESHAWAR HIGH COURT  
PESHAWAR



Ph: No. 091-9210149-158  
Ext: No. 394

No. 1487 /Judl:  
Dated Peshawar the 22/4 2016

From

The Additional Registrar (J),  
Peshawar High Court,  
Peshawar.

To

1. The Chief Information Commissioner, KPK Information Commission, Peshawar.
- ~~2. The Registrar, Right to Information Commission, KPK Peshawar.~~
3. The Govt. of KPK through Secretary, Elementary & Secondary Education, Civil Secretariat, Peshawar.

Subject: Writ Petition Nos. 4120-P, 4121-P & 4122-P of 2015.

1. B.I.S.E ... VS ... Atta Ullah Bukhari ... (Main)
2. B.I.S.E ... VS ... Sabra Gul etc.
3. B.I.S.E ... VS ... Naik Muhammad.

\*\*\*\*\*

Memo:

I am directed to forward herewith copy of main Judgement dated 15-04-2016, passed by Division Bench of this Court in the titled case, for compliance.

*[Signature]*  
ADDITIONAL REGISTRAR (J)

Encl:

Copy of Order.

Right to Information Commission Government of KPK.	
Dist. No.	2882
Date	25/4/16
Section	

THE  
PESHAWAR HIGH COURT  
PESHAWAR



Ph: No. 091-9210149-158  
Ext: No. 364

No. 608 /Judl:  
Dated Peshawar the 08/12/2015

From

The Additional Registrar (J),  
Peshawar High Court,  
Peshawar.

To

1. The KPK Information Commission through Chief Information Commissioner, Peshawar.
2. The Chief Information Commissioner KPK Information Commission Peshawar.
3. The Commissioners/Member KPK Information Commission, Peshawar.
4. The Assistant Registrar, Right to Information Commission, KPK Peshawar.
5. The Government of KPK through Secretary Elementary Education Peshawar.

Subject:

Writ Petition No. 4120-P/2015 with Interim Relief

Board of Intermediate & Secondary Education Peshawar

----- Petitioner

Versus

Atta Ullah Shah Bukari etc

--- Respondents

Memo:

I am directed to forward herewith copy of order dated 02/12/2015, passed by a Division Bench of this Court in the titled case, for compliance. You should submit your comments to this Court within fortnight.

ADDITIONAL REGISTRAR (J)

Encl:

Copy of order & Writ Petition.

Right to Information Commission Government of KPK.
Diary No: <u>8969</u>
Date: <u>09-12-15</u>
Section: <u>AR</u>

①

**BEFORE PESHAWAR HIGH COURT, PESHAWAR.**

Writ Petition No. 4120-P/2015

Board of Intermediate and Secondary Education, Peshawar through its  
Chairman..... (Petitioner)

**VERSUS**

- 1) Atta Ullah Shah Bukari S/o (Name not-known)
- 2) Muhammad Anas Bukhari (Minor) S/o Atta Ullah Bukhari Rs/o  
Governor House, Peshawar. (Through Respondent No. 1 as  
guardian at litem) *Main Road Lalazar Colony P.O. Peshawar*
- 3) Khyber Pakhtunkhwa Information Commission through Chief  
Information Commissioner, Peshawar.
- 4) Chief Information Commissioner Khyber Pakhtunkhwa  
Information Commission, Peshawar.
- 5) Commissioners/Members Khyber Pakhtunkhwa Information  
Commission, Peshawar.
- 6) Assistant Registrar, Right to Information Commission KPK,  
Peshawar.
- 7) Government of Khyber Pakhtunkhwa through Secretary  
Elementary Education, Peshawar.....(Respondents)

**WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISATN 1973.**

**PRAYER:**

On acceptance of this writ petition this honorable court may  
very kindly pleased to set aside the impugned order of  
Respondents No. 3 to 6 dated 30/10/2015 being illegal,  
unlawful and with out jurisdiction. Or any other order  
deem proper in the matter may also be passed in favour of  
Petitioner.

**RESPECTFULLY SHEWETH:**

FILED TODAY  
Deputy Registrar

The Petitioner humbly submits as under:

- 1) That the Petitioner is a statutory body constituted under Khyber Pakhtunkhwa Board of Intermediate and Secondary Education Act 1990.
- 2) That the Respondent No. 2 appeared in SSC Annual Examination 2015 under Roll No. 36325.
- 3) That the result of the said examination was declared and the Gazette Book was issued accordingly. (Copy of result Gazette is Annex: "A")
- 4) That the Respondent No. 2 applied for retotalling of Chemistry, Maths and Urdu papers under the Board Rules which was accepted and papers were put to the subject experts for retotalling but no discrepancy was found in the papers of Maths and Urdu, however, 16 marks were increased in the subject of Chemistry. (Copies of application and notification Annex: "B" and "C" respectively)
- 5) That thereafter the Respondent No. 1 applied to Respondent No. 3 for issuance of direction to the Petitioner to provide the photo copies of the answer books of the Respondent No.1.
- 6) That the Respondent No. 6 on the complaint of Respondent No. 1 issued a letter dated 02/09/2015 which was dully replied by the Controller of Examination vide letter dated 18/09/2015. (Copy is Annex: "D").
- 7) That the Respondent No. 6 vide letter dated 30/10/2015 directed the Petitioner to provide the copies of the answer books of Respondent No. 2 to the Respondent No. 1.
- 8) That Petitioner, being aggrieved from the illegal act and order of the Respondents No. 3 to 6 and having no other adequate and efficacious remedy, files this Constitutional Petition inter alia on the following grounds;

#### GROUNDS

FILED TODAY  
A) Deputy Registrar  
20 NOV 2015

That Respondents No. 3 to 6 have not treated Petitioner in accordance with law, rules and policy on subject and acted in

violation of Article 4 of the Constitution of Islamic Republic Pakistan, 1973 and unlawfully issued the impugned order, which is unjust, unfair and hence not sustainable in the eye of law.

- B) That the impugned order of Respondents No. 3 to 6 is illegal, unlawful and without jurisdiction as the photo copy of answer books can not be provided to the Respondent No. 1 under the Board rules.
- C) That as the answer book is not the Public document, therefore, under the law the Respondents No. 3 to 6 were not competent to issue the impugned order.
- D) That the impugned order is void, discriminatory, arbitrary and obviously mala fide.
- E) That if the order of the Respondents No. 3 to 6 is accepted then it would lead to dangerous consequences, it would open a door for every unsuccessful candidate to challenge result of his examination in Court, thus involving educational institutions into unending and unethical litigations and bringing whole system of examination in vogue at stake solemnity of educational institutions and process of examination could not be sacrificed on the altar of expediency.

For the aforesaid grounds/reasons and others to be stated at the time of arguments it is, therefore, respectfully prayed that the impugned order dated 30/10/2015 being illegal, unlawful and without jurisdiction may very kindly be set aside.

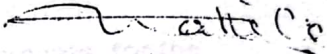
FILED TODAY  
Deputy Registrar  
20 NOV 2015

Any other relief as deemed appropriate in the circumstances of case not specifically asked for may also be granted to petitioner.

**INTERIM RELIEF.**



Till the disposal of instant writ petition the operation of impugned order dated 30/10/2015 may very graciously be suspended to meet the ends of justice.

Petitioner

Through   
(Shakila Begum)  
Advocate,  
Peshawar.

FILED TODAY  
Deputy Registrar  
20 NOV 2015

PESHAWAR HIGH COURT, PESHAWAR.ORDER SHEET

Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge.
<u>02.12.2015</u>	<p><u>WP No. 4120-P/2015 with I.R</u></p> <p><b><u>Present:</u></b> Ms. Shakila Begum, Advocate, for the petitioner.</p> <p style="text-align: center;">===</p> <p>Syed Qaiser Ali Shah, Additional Advocate General, present in Court in some other case, accepts notice of this petition on behalf of respondents No. 3 to 7 and seeks time to file comments. Allowed. The needful be done within a fortnight. Adjourned to a date in office. In the meanwhile, the operation of impugned order is suspended.</p> <p style="text-align: right;">   <u>JUDGE</u> </p> <p style="text-align: right;">   <u>JUDGE</u> </p>

Nawab Shah



**OFFICE OF THE ADVOCATE GENERAL KHYBER PAKHTUNKHWA.  
HIGH COURT BUILDING, PESHAWAR.**

No. 22126-29 /AG, KPK dated 07/12/2015  
Office phone No. 091-9210119 091-9213833)  
Fax No. 091-9210270

**COURT MATTER/MOST IMMEDIATE**

*Atta Ullah -*

To

1. The Secretary,  
Elementary & Secondary Education,  
Govt. of Khyber Pakhtunkhwa, Peshawar.
2. ✓ The Chief Information Commissioner,  
Khyber Pakhtunkhwa Information Commission,  
Peshawar
3. The Commissioners/Members  
Khyber Pakhtunkhwa Information Commission,  
Peshawar.
4. Assistant Registrar, Right to Information Commission,  
Khyber Pakhtunkhwa, Peshawar.

Subject:- WP NO.4120/2015 CHAIRMAN B.I.S.E. VERSUS  
GOVT.

Sir,

The captioned case was fixed for hearing on  
02/12/2015, before the Hon'ble Peshawar High Court, Peshawar.

The Hon'ble Court was gracious enough to adjourn the  
case with the directions to file comments within fortnight. Copy of  
order sheet dated 02/12/2015 is enclosed herewith.

It is, therefore, desired that the Hon'ble Court's  
directions be complied with in letter & spirit at the earliest.

*(Signature)*  
(SYED QAISAR ALI SHAH)  
Additional Advocate General-III,  
Khyber Pakhtunkhwa, Peshawar.

No. \_\_\_\_\_ /A.G.

Copy forwarded for information to:-  
The Additional Registrar (Judicial) Peshawar High Court,  
Peshawar.

Right to Information Commission Government of KPK.
Diary No: <u>8942</u>
Date: <u>09-12-15</u>
Section: <u>AR</u>

*(Signature)*  
Additional Advocate General-III,  
Khyber Pakhtunkhwa, Peshawar.



PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET

Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge.
<u>02.12.2015</u>	<p><u>WP No. 4120-P/2015 with I.R</u></p> <p><u>Present:</u> Ms. Shakila Begum, Advocate, for the petitioner.</p> <p style="text-align: center;">===</p> <p>Syed Qaiser Ali Shah, Additional Advocate General, present in Court in some other case, accepts notice of this petition on behalf of respondents No. 3 to 7 and seeks time to file comments. Allowed. The needful be done within a fortnight. Adjourned to a date in office. In the meanwhile, the operation of impugned order is suspended.</p> <p style="text-align: right;"><u>JUDGE</u></p> <p style="text-align: right;"><u>JUDGE</u></p>

*Nawab Shah*



**OFFICE OF THE ADVOCATE GENERAL KHYBER PAKHTUNKHWA,  
HIGH COURT BUILDING, PESHAWAR.**

No. 2028-31 /AG, KPK dated 11/02/2016  
Office phone No.091-9210119 091-9213833)  
Fax No. 091-9210270

**COURT MATTER/MOST IMMEDIATE**

Right to Information Commission  
Government of KPK.

Diary No: 823

Date: 11-2-16

Section: AS

To

1. The Secretary,  
Elementary & Secondary Education,  
Govt. of Khyber Pakhtunkhwa, Peshawar.
2. The Chief Information Commissioner,  
Khyber Pakhtunkhwa Information Commission,  
Peshawar
3. ✓ The Commissioners/Members  
Khyber Pakhtunkhwa Information Commission,  
Peshawar.
4. Assistant Registrar, Right to Information Commission,  
Khyber Pakhtunkhwa, Peshawar.

Subject:- WP NO.4120/2015 CHAIRMAN B.I.S.E. VERSUS GOVT etc

Sir,

Reference to this office letter No. 22126-29/AG, dated 07/12/2015 on the subject noted above.

The captioned case was fixed for hearing on 01/02/2016 before the Hon'ble Peshawar High Court, Peshawar.  
The undersigned had put appearance in the said case.

The Hon'ble Court was gracious enough to adjourn the case with the directions as below.

"Latter seeks time to comply with the order dated 2/12/2015. May do so within a week time positively. Adjourned to a date in office. In the meanwhile, the operation of the impugned order shall remain suspended."

Copy of order sheet dated 1/2/2016 is enclosed herewith.

It is, therefore, desired that the Hon'ble Court's directions be complied with in letter & spirit at the earliest.

(SYED QAISAR ALI SHAH)  
Additional Advocate General-III,  
Khyber Pakhtunkhwa, Peshawar.

No. \_\_\_\_\_ /A.G.



Copy forwarded for information to:-  
The Additional Registrar (Judicial) Peshawar High Court, Peshawar.

Additional Advocate General-III,  
Khyber Pakhtunkhwa, Peshawar.

PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'

FORM OF ORDER SHEET

Date of Order	Order or other proceedings with signature of the Judge(s)
1	2
1.2.2016	<p data-bbox="587 517 997 551"><u>W.P. No.4120-P/2015 with I.R(M).</u></p> <p data-bbox="587 584 683 618"><u>Present:</u></p> <p data-bbox="730 651 1070 712">Ms. Shakila Begum, Advocate, for the petitioner .</p> <p data-bbox="730 745 1129 806">Syed Qaiser Ali Shah, AAG, for Provincial Government.</p> <p data-bbox="874 846 922 869">***</p> <p data-bbox="579 976 1398 1301">Latter seeks time to comply with the order dated 2.12.2015. May do so within a week time positively. Adjourned to a date in office. In the meanwhile, the operation of the impugned order shall remain suspended.</p> <p data-bbox="1169 1317 1337 1395"> JUDGE</p> <p data-bbox="1201 1447 1337 1525"> JUDGE</p>

\*T.Shah\*

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET

Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge.
<u>02.12.2015</u>	<p><u>WP No. 4120-P/2015 with I.R</u></p> <p><u>Present:</u> Ms. Shakila Begum, Advocate, for the petitioner.</p> <p>====</p> <p>Syed Qaiser Ali Shah, Additional Advocate General, present in Court in some other case, accepts notice of this petition on behalf of respondents No. 3 to 7 and seeks time to file comments. Allowed. The needful be done within a fortnight. Adjourned to a date in office. In the meanwhile, the operation of impugned-order is suspended.</p> <p style="text-align: right;"><u>JUDGE</u></p> <p style="text-align: right;"><u>JUDGE</u></p>

Nawab Shah

**BEFORE PESHAWAR HIGH COURT, PESHAWAR.**

Writ Petition No. 6120-P/2015

Board of Intermediate and Secondary Education, Peshawar through its  
Chairman..... (Petitioner)

**VERSUS**

- 1) Atta Ullah Shah Bukari S/o (Name not-known)
- 2) Muhammad Anas Bukhari (Minor) S/o Atta Ullah Bukhari Rs/o  
Governor House, Peshawar. (Through Respondent No. 1 as  
guardian at litem) *Main Road Lala Zor colony P.O. Peshawar University*
- 3) Khyber Pakhtunkhwa Information Commission through Chief  
Information Commissioner, Peshawar.
- 4) Chief Information Commissioner Khyber Pakhtunkhwa  
Information Commission, Peshawar.
- 5) Commissioners/Members Khyber Pakhtunkhwa Information  
Commission, Peshawar.
- 6) Assistant Registrar, Right to Information Commission KPK,  
Peshawar.
- 7) Government of Khyber Pakhtunkhwa through Secretary  
Elementary Education, Peshawar.....(Respondents)

**WRIT PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISATN 1973.**

**PRAYER:**

On acceptance of this writ petition this honorable court may  
very kindly pleased to set aside the impugned order of  
Respondents No. 3 to 6 dated 30/10/2015 being illegal,  
unlawful and with out jurisdiction. Or any other order  
deem proper in the matter may also be passed in favour of  
Petitioner.

**RESPECTFULLY SHEWETH:**

The Petitioner humbly submits as under:

**PESHAWAR HIGH COURT PESHAWAR**

**ORDER SHEET**

<i>Serial No. of Order or Proceedings</i>	<i>Date of Order or Proceedings</i>	<i>Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary</i>
1	2	3
	15.4.2016	<p><b><u>Writ Petition No. 4120-P/2015.</u></b></p> <p>Present:</p> <p>Ms. Shakila Begum, Advocate for the petitioner.</p> <p>Mian Arshad Jan, AAG, for official respondents.</p> <p>*****</p> <p><b><u>ROOH-UL-AMIN KHAN, J:-</u></b> By this single judgment we propose to decide three writ petitions bearing No. 4120-P/2015, No.4122-P/2015 &amp; No. 4121-P/2015, as all of them having involved therein, common question of law and facts.</p> <p>2. Through the instant petition under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973, Board of Intermediate &amp; Secondary Education, Peshawar through its Chairman ( petitioner herein) seeks issuance of appropriate writ praying that:</p> <p><b>“ On acceptance of this writ petition this honourable Court may very kindly pleased to set aside the impugned order of respondent No. 3 to 6 dated 30.10.2015 being illegal, unlawful and without jurisdiction. Or any other order deem proper in</b></p>

the matter may also be passed in favour of petitioner.”

3. In essence, the grievance of the petitioner is that the impugned order whereby the Commission-II by invoking the provisions of Khyber Pakhtunkhwa Right To Information Act, 2013 directed the petitioner to provide photocopy of the answer sheet to the complainant, within three working days failing which punitive action will be taken against the respondents, is against law as the answer book is not a public document and could not be provided to candidate.

4. Initially comments of the respondents were called for, but despite repeated reminders the same could not be filed. at the very outset learned Law Officer, when confronted with the proposition as to whether the answer book is a public document and its copy could be provided to the candidate, he failed to persuade the Court, however stated that the word 'public document' is not defined in the Khyber Pakhtunkhwa Right to Information Act, 2013, whereas section 12 of the Act ibid provides that where an applicant has indicated a preferred means for accessing information, such

*Law Officer*

	<p>as physical copy ( attested), an electronic copy or an opportunity to inspect certain record, the public body shall provide access in that form unless to do so would unreasonable interfere with its operations or harm the document.</p> <p>5. The controversy with regard to inspection of the answer papers raised before the august Supreme Court of Pakistan in case titled <b>Abdul Hakim Hashmi...VS...Federal Public Service Commission ( 2002 SCMR 504)</b> wherein it was ruled that the answer papers in all the subjects of examination are secrete documents and cannot be permitted to be inspected or seen by the candidates or their representative. Similarly the summoning of answer book by the High Court, even in its constitutional jurisdiction, was disapproved by the apex Court in the case titled <b>BISE Lahore...VS...Mst. Saima Azad (1996 SCMR 676)</b>. Admittedly the answer book of a candidate is not a public document and providing its copy to the candidate is not admissible by the <u>state</u> i.e. calendar of the Board. The worthy Commissioner by invoking the provisions of the Act, 2013 has acceded of</p>
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*Lawyer*