

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja

Mr. Justice Khilji Arif Hussain

Mr. Justice Ejaz Afzal Khan

**C. P. No. 2255 of 2010 & Constitution Petitions Nos. 14, 16, 17 and 18
Of 2013 alongwith CM Appeal No. 157/2009 with CMAs 2335-2337 of 2013
And CMA 2368 and 2705 of 2013.**

Moulvi Iqbal Haider

Versus

Federation of Pakistan, thr. Secy. M/o Law & Justice etc.

AND

Const.P.14/2013

Lahore High Court Bar Association thr. Its President

Versus

General Rtd. Parvaiz Musharraf and another

AND

Const. P.16/2013

Barrister Amjad Malik, Chairman Association of Pakistan Lawyers (England)

Versus

General Rtd. Parvaiz Musharraf

AND

Const. P.17/2013

Sheikh Ahsan ud Din Advocate Supreme Court

Versus

Federation of Pakistan and others

AND

Const.P.18 of 2013

Abdul Hakeem Khan, ASC

Versus

General Rtd. Parvaiz Musharraf

AND

CMA No. 157 of 2009.

Communist Party of Pakistan vs. Federation of Pakistan & others

For the Petitioner(s):

Mr. A. K. Dogar, Sr. ASC

Mr. Muhammad Siddique Khan Baloch, AOR (In CP-2255/2010)

Mr. Hamid Khan, Sr. ASC & Mr. Taufeeq Asif, ASC

(In Const. P. 14/13)

Mr. Arshad Ali Chaudhry, ASC/AOR (In Const. P.16/13)

Sheikh Ahsan ud Din, ASC (in Const.P.17/2013)

Mr. Muhammad Ikram Chaudhry, Sr. ASC a/w

Mr. Abdul Hakeem Khan, ASC (In Const. P. 18/13)

For the applicants:

(in CM Appeal 157/09) Engineer Jamil Ahmed, in person.

For the applicants:

In person (In CMAs 2335-2337/13 & 2368 & 2705/13)

For the Respondent(s): Mr. Ahmed Raza Khan Qasuir, Sr. ASC (In Const. P. 14 & 17/13)
 Mr. Qamar Afzal, ASC (in Const.P.16/2013) assisted by/facilitated by
 Ms. Zainab Raza Effendi, LLM, (Warwick University U.K.),
 Ms. Rehana Zaman, LLM (Islamic University, Pakistan),
 Mr. Nabeel Rehman, LLM (University of Newcastle, UK),
 Ms. Amina Iqbal, Bar-at-Law (University of Northumbria, UK),
 Ms. Zohra Khokhar, (LLB.(Hons.) University of Northumbria, UK),
 Mr. Zain Rehman, LLB (University of Birmingham, UK),
 Raja Asjid Iqbal Satti, Advocate
 Raja Muhammad Ibrahim Satti, Sr. ASC
 (in CP-2255/10 & Const.P.18 of 2013) with
 Ms. Shazia Yasin Hashmi, Advocate High Court.

For the Federation: Mr. Munir A. Malik, Attorney General for Pakistan
 Mr. Dil Muhammad Khan Alizai, DAG

Date of hearing: 03.07.2013

ORDER

Jawwad S. Khawaja, J. The petitioners in all these petitions have prayed that the Federal Government be directed to lodge a complaint under Article 6 of the Constitution against the respondent Gen (Retd) Pervez Musharraf and others. The Federal Government had filed an initial statement which has been reproduced in our order of 24.6.2013. In the said order, we had asked the learned Attorney General to file a further statement *“providing details of the actions envisioned by the Federal Government in the light of the present petitions and the process through which such actions will be given effect”*. Pursuant to the said order of 24.6.2013, the learned Attorney General filed the following statement on 26.6.2013:-

“1. The Prime Minister has directed the Secretary Interior to forthwith direct the Director General FIA to constitute a special investigative team of senior officers to commence an inquiry and investigation in relation to the acts of General (R) Parvez Musharraf of 3rd November, 2007 that may amount to high treason under Article 6 of the Constitution and to finalize as expeditiously as possible the statement of case to be put up by the Federal Government before the Special Court to be constituted under the Criminal Law Amendment (Special Courts) Act, 1976.

2. The Law entrusts the investigation of the offence of high treason to the FIA under entry No.14 of the Schedule of the FIA Act, 1974 read with Section 3(a) and 6 thereof. However, in order to ensure expeditious completion of the inquiry and

investigation, the Prime Minister is also considering the constitution of a Commission to oversee and monitor the progress of the proceedings.

3. On the completion of the investigation, the Federal Government shall file the requisite complaint under Section 5 of the Criminal Law Amendment (Special Courts) Act, 1976 and take steps to constitute the Special Court in accordance with Section 4 of the said Act for the trial of the offence."

2. The prayer in these petitions thus effectively appears to have been accepted by the Government. Moreover, the learned counsel representing the petitioners had also expressed their satisfaction with the statement, subject only to a reservation that no time frame for the inquiry had been given for conclusion of the inquiry/investigation of the case which was to be initiated by the Government. The learned Attorney General has stated that the government has constituted an Inquiry Committee comprised of senior functionaries of the FIA and it will be upto the said Committee to undertake the investigation. We can expect that such investigation shall be concluded without unnecessary delay. We may also note that the learned counsel representing the respondent had also stated on the previous date of hearing that these matters to be brought to an end in view of the statement filed by the Federal Government on 26.6.2013 as reproduced above. In addition, we had also taken into consideration the resolution of the Senate dated 23.1.2012 and have taken judicial notice of the speech of the President and that of the Prime Minister of Pakistan in the Parliament.

3. We are consciously, deliberately and as submitted by Mr. Muhammad Ibrahim Satti, learned Sr. ASC for the respondent not touching the question of "abrogation" or "subversion" or "holding in abeyance the Constitution" or "any conspiracy in that behalf" or indeed the question of suspending or holding the Constitution in abeyance or the issue as to abetment or collaboration in the acts mentioned in Article 6 of the Constitution. This is so because any finding/observation or view expressed by us may potentially result in prejudice to the inquiry/investigation or subsequent trial should that take place as a result of such investigation.

4. The Federal Government has, as noted above, proceeded in furtherance of its constitutional obligation envisioned in Article 6 of the Constitution and for the present this suffices in terms of the said Article and the reliefs respectively sought by the petitioners in these petitions. We, therefore, dispose of these petitions in the above terms with the observation that the Federal Government shall proceed as per undertaking dated 26.6.2013, reproduced above without unnecessary delay.

Judge

Judge

Judge

Islamabad,
3rd July, 2013
A. Rehman/*