

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

Present:

**Mr. Justice Iftikhar Muhammad Chaudhry, HCJ**  
**Mr. Justice Khilji Arif Hussain**  
**Mr. Justice Tariq Parvez**

**Human Rights Case No.19 of 1996**

[APPLICATION BY AIR MARSHAL (R)  
MUHAMMAD ASGHAR KHAN]

Air Marshal (R) Muhammad Asghar Khan

**Petitioner**

**VERSUS**

1. Gen(R) Mirza Aslam Baig,  
Ex-Chief of Army Staff;
2. Lt. Gen(R) Asad Durrani, Ex-DG, ISI; and
3. Younas Habib,  
Ex-Chief Mehran Bank Limited.

**Respondents**

For the Petitioner	:	Mr. Salman Akram Raja, ASC <i>a/w</i> <i>Petitioner</i>
For Respondent No.1	:	Mr. M. Akram Sheikh, Sr.ASC <i>a/w</i> <i>Respondent No.1</i>
For Respondent No. 2	:	In person.
For Respondent No.3	:	In person.
For Defence Ministry	:	Raja Abdul Ghafoor, AOR Comdr. M. Hussain Shahbaz, Director (Legal)
For Applicant (in CMA.918/97)	:	Sheikh Khizar Hayat, Sr.ASC
Date of Hearing	:	08.03.2012

**ORDER**

In obedience to order dated 29.02.2012, the office has placed on record a sealed envelop under the cover "**TOP** **SECRETE**" "**REPORT OF THE COMMISSION TO REVIEW THE WORKING OF SECURITY & INTELLIGENCE**

AGENCIES". The envelop has been opened in Court, which contains four folders **Part-II** (Report of the Commission to Review the Working of Security & Intelligence Agencies (MARCH – 1989)); **Part-III** (Correspondence); **again Part-II** (photocopy of the same report of the Commission (March-1989); and **again Part-III** (Correspondence).

2. A perusal of the same indicates that the Report of the Commission to Review the Working of Security & Intelligence Agencies has not been filed. However, Comdr. Muhammad Hussain Shahbaz, Director (Legal), representing Ministry of Defence, is allowed to go through these documents in the office of Registrar of this Court, who shall facilitate him in this behalf. He is directed to file the requisite reports pertaining to the year 1990 as well as up-to-date reports on the Working of Security & Intelligence Agencies. In the interest of nation, these documents shall be kept **CONFIDENTIAL**.

3. The envelop produced before us has been given to Mr. Rafaqat Hussain, CA/Branch Incharge, Civil-II, who shall handover the same to Registrar of this Court, who shall put them under seal.

4. Another envelop has been produced, which contains the following items:-

**"Item No.1**

1. 2 Audio Cassettes relating to HRC.19/1996 containing detail, as under:-

Cassette No.1: Dated 20.11.1997 timings 10.30 to 11.00 a.m.

Cassette No.2: Dated 25.11.1997 timing, 10 am to 11 am and 11.30 to 1.00 pm. (side A)  
dated 26.11.1997 timings 11:45 am to 1:15 pm (side B)

## **Item No.2**

File No.1: Consisting 3 pages in original

### Page No.1:

(Note dated 28.5.1999 of the then Additional Registrar with regard to obtaining the orders of HJ (1) whether Lt. General ® Nasirullah Babar and Lt. General ® Asad Durrani may be asked to read their statements and sign them in the presence of an officer of this Court).

### Page No.2

Note dated 1.6.1999 regarding submission of unsigned statements/cross-examination of Maj. ® Nasir Ullah Babar and Lt. General Asad Durrani to the then HJ(1)

### Page No.3

Order dated 2.6.1999 of Justice Said-uz-Zaman Siddiqui

## **File No.2 in original**

Srl. Nos.	Detail (All in original)	Pages
1	Cross examination of Maj. Gen.(R) Nasir Ullah Babar by Genl. Mirza Aslam Baig	1-3
2	Explanation of Gen Babar with regard to his cross examination	4
3	Cross examination of Maj. Gen. (R) Nasir Ullah Babar by Habib-ul-Wahab-ul-Khairi (in Urdu)	5-9
4	Cross examination of Maj. Gen. (R) Nasir Ullah Babar by Mr. Muhammad Akram Sheikh.	10-21
5	Cross examination of Lt. Gen.(R) Asad Durrani	22-25
6	Cross examination of Lt. Gen.(R) Asad Durrani by Habib-ul-Wahab-ul-Khairi	26-33
7	Cross examination of Lt. Gen.(R) Asad Durrani by Maj. Gen.(R) Naseer Ullah Babar	34-35

## **Item No.3**

### Copy No.08 of 11 Copies:-

Folder with regard to the report of the commission to review the working of Security and Intelligence Agencies (March-1989) submitted by (i). Air Chief Marshal Zulfiqar Ali Khan, Chairman, (ii). S.K. Mahmud, Secretary Interior, Member, (iii). Mr. M.A.K. Chaudhry, Member and (iv) Air Commodore Muhammad Yamin, Secretary. (Pages 1-57).

## **Item No.4**

ADO letter No.RC/1/89 dated 27.3.1989 addressed to the Mohtarma Benazir Bhutto, Prime Minister of Pakistan, Prime Minister's Secretariat, Rawalpindi by the Air Chief Marshal, Zulfiqar Ali Khan along with its synopsis of the Commissioner's Report for facility of reference. (Pages 1-8)".

5. The office has also made efforts to find out as to whether examination-in-chief of Gen.(R) Naseer Ullah Khan

Babar and Lt. Gen.(R) Asad Durrani was recorded; according to the report, no such document is available on record. However, Mr. Salman Akram Raja, learned ASC, appearing for the petitioner, states that they were subjected to cross-examination on the affidavits, which have already been filed. As these proceedings were drawn *in camera*, therefore, the same be sealed and are handed over to Mr. Rafaqat Hussain for depositing the same with the Registrar. As regards proceedings drawn by the office of Registrar to locate these documents, the same are also made part of the record and are ordered to be deposited with the Registrar.

6. In pursuance of order dated 29.02.2012, Mr. Younas Habib, Ex-Chief of Ex-Mehran Bank Limited, has appeared and stated that earlier at the time when the proceedings were conducted in this case no statement was filed by him. It seems that might be he had filed or given statement before the investigating agencies under Section 161, Cr.PC in connection with some criminal cases against him, as reference of the same is available at page 220 of the file. However, today he has placed on record a handwritten statement/affidavit, which was not sworn on oath, although such statement or affidavit is required to be sworn under Supreme Court Rules, 1980. It seems that as he is a sick person and attending the Court on Wheelchair, therefore, we accept the affidavit and direct the office to manage attestation of the same, which has been done.

7. Initially, Mr. Younas Habib claimed that the affidavit filed by him be considered as a classified document. However, on having gone through the same we are of the opinion that it does not fall within the category of the documents, in respect whereof privilege could be claimed, thus the same is declared not to be the classified one. He has read out the contents of the affidavit in Court and also handed over three copies of the same along with a photograph wherein he has been shown to be one of the persons along with the then President of Pakistan Ghulam Ishaq Khan (Late) and uniformed officer of Pakistan Army having conversation with Mirza Aslam Baig, Ex-Chief of Army Staff. The same be also kept on record.

8. The office is directed to prepare photostat copies of the affidavit filed by Mr. Younas Habib and handover the same to Mr. Muhammad Akram Sheikh, learned Sr.ASC, Mr. Salman Akram Raja, learned ASC; Mr. Asad Durrani and Sheikh Khizar Hayat, learned Sr.ASC. They may go through the same and if desire or instructed may opt to file their replies to the same by tomorrow i.e. 09.03.2012.

Re-list on **09.03.2012.**

**Chief Justice**

**Judge**

**Judge**

**ISLAMABAD**

08.03.2012

*Zubair*