

Signed by H.S.B.
For implementation Br.
MoI
18/6.

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

CMA No.1674/13 in Constitution Petition No.105/2012 and
Constitution Petition No.104/2012 & CMA-3464/12
AND
Constitution Petition No.105/2012 alongwith CMA-3795/2012 & CMA-3798/2012
HRC No.23957-S/12 and Const. Petition No.53 of 2012

AND

Constitution Petition No.117 of 2012

Hamid Mir and another ... Petitioner (s)

Versus

Federation of Pakistan, etc. ... Respondent (s)

For the petitioner(s): M/s Hamid Mir and Absar Alam (both in person)

For the petitioner(s): Dr. Tariq Hassan, ASC
(In Const.P.53/12) Syed Safdar Hussain, AOR

For the petitioner(s): Nemo
(In Const.P.104/12)

For the petitioner(s): Sheikh Ahsan ud Din, ASC
(In Const.P.117/12)

For respondent No.1: Raja Aamir Abbas, ASC
Mr. M. Azam, Additional Secretary.
Mr. Nasir Jamal, DG
Mr. Tahir Hassan, Director o/o Secretary.
Muhammad Azam (Press Information Officer)

For Pak. Broadcasting Association: Khawaja Tariq Sohail, ASC

For respondents 2-3: Mr. Hasnain Ibrahim Kazmi, ASC

For respondent No.4-5: Syed Zahid Hussain Bukhari, ASC

For respondent No.6: Nemo.

For respondent No.7: Mr. Naveed Ihsan & Mr. Asif Hussain

For respondent No.8: Nemo.

For the Federation: Mr. Dil Muhammad Khan Alizai, DAG

For the Province of KPK: Nemo

For respondent No.11 & Value T.V.: Raja Muqsit Nawaz, ASC

For PFUJ: Mr. Riffat Qadri

For ECP: Mr. Abdul Rehman, Addl. DG Law.

For M/s Vision Network: Nemo

For M/s AURORA: Nemo.

For Express TV: Mr. Ghulam Nabi Yousafzai

For VIVE TV: Nemo.

For PTV: Mr. Shahid Mehmood Khokhar, ASC

For Punjab T.V.: Nemo.

For PEMRA: Hafiz S. A. Rehman, Sr. ASC (In Const.P.104/12)

For Airways Media: Nemo.

For ARY: Nemo.

For Cable Operators: Dr. Amjad Hussain Bokhari, ASC

For Pakistan Broadcasters: Nemo.

(In CMA-3464/12): Mr. M. S. Khattak, AOR

For Indus Television: Mr. Tariq Ismail
Mr. Asad Kharl, (Reporter Express News)

Date of Hearing: 17.4.2013

ORDER

Jawwad S. Khawaja, J.- We have heard this case today at length and we are directing the Ministry of Information and Broadcasting to submit two lists in Court. The first list (List 'A') should contain itemized particulars of those expenditures, by whatever name called {including any Special Service Expenditure, Special Publicity Fund and funds for the Institute of Regional Studies (IRS)}, for which the Ministry does not claim any privilege or secrecy. Each page of this list shall be certified to be a true copy of the original record of the Ministry. Certification shall be done by the Secretary/Principal Accounting Officer of the Ministry and Mr. Tahir Hassan, Director Secretary's Office. The second list (List 'B') should contain all items of expenditure regardless of title or head of account in respect of which the Ministry asserts a privilege and claims secrecy against public disclosure. This list shall also be certified by the Secretary/PAO and Muhammad Tahir Hassan, Director Secretary's Office. The lists shall be filed in Court during this week. The precaution of requiring certification/attestation of list 'A' and list 'B' is being taken because of a submission made by one of the petitioners namely, Mr. Absar Alam that the correct

record of the Ministry may not be altered/manipulated. Mr. Muhammad Tahir Hassan has assured the Court that the said lists 'A' and 'B' shall be true copies of the record and nothing shall be omitted from or added to the said record.

2. Learned counsel for the Ministry has yet again sought an adjournment. He was specifically asked on the previous dates of hearing to furnish to us all such statutes, rules, notifications, instructions etc. which relate to the claim for privilege/secrecy. This has not been done. Today specific averments in various CMAs filed on behalf of the Ministry have been brought to the notice of learned counsel. These include the assertions which have been made *inter alia*, in CMA 446/2012. We had also repeatedly asked the learned counsel in the previous hearing to state the legal sanction/basis behind rule 37(5) of the General Finance Rules which stipulates that "*the accounts of secret service expenditure will not be subjected to scrutiny by the audit authority*". Learned counsel, however, has referred to some rules but without showing the statutory/legal/constitutional basis which supports such rule. We once again direct the Ministry of Information and Broadcasting to file in Court all such statutes, rules, notifications, instructions etc. which support the Ministry's claim to privilege/secrecy.

3. In addition to the above, it was brought home to the learned counsel for the Ministry that in 2001, the Auditor Generals (Finances, Powers and terms and conditions of service) Ordinance ('the Audit Ordinance, 2001) had been promulgated. Particularly sections 8 and 14 of the Audit Ordinance, 2001 were referred to which indicate *prima facie*, that all expenditure of the Ministry is required to be audited by the Auditor General. The constitutional provisions contained in Articles 169 and 170 constitute the basis of openness and audit to be undertaken by the Auditor General as the watchdog of the people of Pakistan. Article 19A of the Constitution is also relevant for the purpose of determining if privilege is available to the Ministry in respect of any items.

4. As far as this aspect is concerned, it shall be taken up on 22.4.2013. The contents of the report of the Media Commission on TOR-F shall be placed on the website of this Court as well as the website of the Election Commission of Pakistan.

CMA No.2148/2013.

5. Khawaja Tariq Sohail, ASC is on the legs. He has filed CMA No. 2148/2013 on behalf of the All Pakistan Newspapers Society and the Pakistan Broadcasters Association.

This matter shall be taken up tomorrow i.e. 18.4.2013 as it is already past 4:30 p.m. Connected to this is a set of documents including the copy of the summary filed in Court by Raja Aamir Abbas, ASC. The summary was approved by the then Prime Minister on 16.3.2013 i.e. the last day of the previous government. This summary was approved authorizing payment of Rs.1,32,65,00,000/- (Rupees one arab, thirty two crores and sixty five lakhs).

Judge

Judge

Islamabad, the
17th April, 2013.
A. Rehman