

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

**Present:**

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

**CIVIL PETITION NO.2255/2010**

Moulvi Iqbal Haider  
**Vs.**  
Federation of Pakistan, thr. M/o Law & Justice etc.)

**AND**

**Constitution Petition No.14/2013**

Lahore High Court Bar Association thr. Its President  
**Vs.**  
General (R) Parvaiz Musharraf and another

**AND**

**Constitution Petition No.16/2013**

Barrister Amjad Malik, Chairman Association of Pakistani  
Lawyers (England)  
**Vs.**  
General (R) Parvaiz Musharraf

**AND**

**Constitution Petition No.17/2013**

Sheikh Ahsan ud Din, ASC  
**Vs**  
Federation of Pakistan and others

**AND**

**Constitution Petition No.18/2013**

Abdul Hakeem Khan, ASC, former Chairman PBC  
**Vs.**  
General (R) Parvaiz Musharraf, etc.

For the petitioner (s)  
(In CP 2255/2010)

Mr. A. K. Dogar, Sr. ASC  
Syed Zafar Abbas Naqvi, AOR

For the petitioner (s)  
(In Const. P. 14/2013)

Mr. Hamid Khan, Sr. ASC

For the petitioner (s)  
(In Const. P. 16/2013)

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For the petitioner (s)  
(In Const. P. 17/2013)

Sheikh Ahsanuddin, ASC

For the petitioner (s)  
(In Const. P. 18/2013)

Mr. Muhammad Ikram Ch. Sr. ASC  
Syed Safdar Hussain, AOR

For the respondent (s) N.R. (In all cases)

Date of Hearing : 08.04.2013

**ORDER**

**Jawwad S. Khawaja, J.** We have before us 5 cases. Civil Petition No. 2255/2010 is a petition which impugns the judgment of the Sindh High Court dated 14.10.2010. It has been filed by one Moulvi Iqbal Haider who was petitioner before the Sindh High Court. His case is that although the Sindh High Court did proceed to hold that *"the proclamation of PCO dated 3.11.2007, promulgated by Rtd. General Pervaiz Musharraf clearly shows that ... he is the person who is responsible for abrogation and subversion of the Constitution"*, the Court chose not to issue any direction to the Federal Government for initiating proceedings under Article 6 read with the provisions of the High Treason (Punishment) Act, 1973 against General Rtd. Pervaiz Musharraf (Respondent No.4). The High Court observed that *"it would be proper for the petitioner to approach and make such prayer before the Hon'ble Supreme Court of Pakistan and seek directions in this regard"*.

2. Mr. A. K. Dogar, Sr. ASC has contended that in terms of the judgment of the High Court dated 14.10.2010 and in view of the clear findings of this Court recorded in the judgment in the case titled Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 879), an order needs to be issued directing the initiation of legal proceedings against General Rtd. Pervaiz Musharraf and others.

3. The other 4 petitions have been filed respectively by the Lahore High Court Bar Association (Const. P.14/2013), Barrister Amjad Malik, Chairman Association of Pakistani Lawyers England (Const. P. 16/2013), Sheikh Ahsan-ud-Din Advocate Supreme Court (Const. P. 17/2013) and Abdul Hakeem Khan Advocate Supreme Court, former Vice Chairman Pakistan Bar Council (Const. P.18/2013). These petitions also seek initiation of proceedings *inter alios*, against General Rtd. Pervaiz Musharraf under Article 6 of the Constitution read with the High Treason (Punishment) Act, 1973 for having committed high treason. In Constitution Petition No. 16 of 2013, the petitioner, who has filed the petition in person, has not appeared. We, however, note that the case was listed through a supplementary cause list issued yesterday i.e. Sunday 7.4.2013. It is also not clear that the

petitioner, who is resident in the UK, has been given intimation of today's hearing. Notice to the petitioner in Const. P. 16 of 2013, shall be repeated.

4. In the remaining cases, learned counsel appearing for the petitioners have drawn the attention of the Court to a number of paragraphs from the judgment of a 14-Member Bench of this Court in the case of Sindh High Court Bar Association v. Federation of Pakistan *supra*. For ease of reference, relevant extracts from these paragraphs are reproduced as under:-

"6. On 22.7.2009 a notice was issued to General Pervez Musharraf (Rtd.) on his available address intimating him about the proceedings in this case and 29.7.2009 as the date fixed therein before this Court ... The factum of issuance of the afore-referred notice was widely televised through National and International T.V. channels. Also, it was widely published in National and International print media, but, on the date so fixed no one entered appearance.

...

56. Each member of the Armed Forces, as per his oath under the Third Schedule to the Constitution in pursuance of Article 244, is bound to bear true faith and allegiance to Pakistan and uphold the Constitution which embodies the will of the people. He is also sworn not to engage himself in any political activities whatsoever ... We agree with the contention of the learned counsel that General Pervez Musharraf failed to abide by his oath to preserve, protect and defend the Constitution. The Constitution was framed to continue to be in force at all times. By Article 6, an in-built mechanism was provided to safeguard the Constitution from its abrogation or subversion by anyone, that is to say, it could neither be cancelled by anyone nor could it be overthrown or undermined by anyone in any manner or mode whatsoever.

...

85. In the light of the above discussion, the actions of General Pervez Musharraf dated 3rd November, 2007, viz., Proclamation of Emergency, PCO No. 1 of 2007 and Oath Order, 2007, etc. are held and declared to be unconstitutional, illegal, mala fide and void ab initio.

...

100. ... that the holding in abeyance of the Constitution and/or making amendments therein by any authority not mentioned in the Constitution otherwise than in accordance with the procedure prescribed in the Constitution itself, is tantamount to mutilating and/or subverting the Constitution ... It should be noted that Articles 6 and 237 were framed in the backdrop of the successive abrogation of the Constitutions and

*imposition of martial laws in the country from time to time by the General commanding the Army at his will and whim.*

5. Learned counsel for the petitioners have also referred to a resolution passed by the Senate of Pakistan on 23.1.2012. The relevant part of this resolution is as under:-

*“Therefore, the House resolves that for these amongst other facts, reasons, acts, breaches and grounds, that:*

*a) He [General Rtd. Pervaiz Musharraf] be arrested immediately on arrival in Pakistan;*

*b) That the Federal Government institutes a case under Article 6 of the Constitution against him”.*

6. Considering the above and also noting the submissions advanced on behalf of the petitioners pointing to the act of high treason allegedly committed by General Rtd. Pervaiz Musharraf and others, it has been contended before us that it was the bounden duty and obligation of the Federation to take affective legal measures and to initiate a criminal case against General Rtd. Pervaiz Musharraf and others, who had *inter alia*, subverted the Constitution. It has further been submitted that the Federation rather than initiating action against such persons and instead of acting in accordance with the resolution of the Senate dated 23.1.2012, has inexplicably, accorded treatment to General Rtd. Pervaiz Musharraf, which is unusual and is normally provided to persons who are commonly referred to as VIPs. It was contended that the Federal Government had thus not fulfilled its constitutional obligation.

7. We have heard learned counsel for the above referred petitioners. It is necessary to issue notice to the respondents in these petitions before proceeding further. The office shall ensure service of notice on the respondents for tomorrow i.e. 9.4.2013. The Inspector General of Police, Islamabad shall serve notice on the respondent General Rtd. Pervaiz Musharraf who is statedly within the Islamabad Capital Territory.

8. The Counsel representing the petitioners particularly Mr. A. K. Dogar and Mr. Hamid Khan have submitted that the respondent General Rtd. Pervaiz Musharraf be taken into custody to ensure that he remains available within the country for the purpose of trial under Article 6 of the Constitution read with the provisions of High Treason (Punishment) Act, 1973. We are, however, of the opinion that in the first instance, notice of these petitions be served on the said respondent for tomorrow. The Inspector General of Police, Islamabad

and, if necessary, the Inspectors General of Police in the Provinces, shall ensure service on the aforesaid respondent. The Secretary, Interior shall also make sure that if the name of the aforesaid respondent General Rtd. Pervaiz Musharraf is not already on the Exit Control List, this shall be done forthwith and a compliance report of this order shall be submitted in Court during the course of the day. The Federation and all its functionaries shall also ensure that the respondent does not move out of the jurisdiction of Pakistan until this order is varied/modified.

9. To come up for hearing tomorrow i.e. 9.4.2013.

*Judge*

*Judge*

Islamabad

08.04.2013

A. Rehman

Not approved for reporting.