

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ  
MR. JUSTICE MIAN SHAKIRULLAH JAN  
MR. JUSTICE JAWWAD S. KHAWAJA  
MR. JUSTICE ANWAR ZAHEER JAMALI  
MR. JUSTICE KHILJI ARIF HUSSAIN  
MR. JUSTICE TARIQ PARVEZ  
MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE AMIR HANI MUSLIM

## INTRA COURT APPEAL NO. 1 OF 2012

[Against the order dated 02.02.2012 passed by  
this Court in Criminal Original No. 06/2012]

Syed Yousaf Raza Gillani  
Prime Minister of Pakistan

... APPELLANT

VERSUS

Assistant Registrar  
Supreme Court of Pakistan & another

... RESPONDENTS

For the appellant:

Mr. Aitzaz Ahsan, Sr. ASC  
Assisted by Mr. Gohar Ali Khan, Advocate  
Mr. M.S. Khattak, AOR

Respondents:

Not represented.

Dates of hearing:

09-10.02.2012

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## ORDER

**IFTIKHAR MUHAMMAD CHAUDHRY, CJ.** – This appeal under section 19 of the Contempt of Court Ordinance, 2003 (hereinafter referred to as the Ordinance, 2003) has been preferred on behalf of appellant Syed Yousaf Raza Gillani, incumbent Prime Minister of Pakistan/Chief Executive under the

mandate of the Constitution of the Islamic Republic of Pakistan against order dated 02.02.2012 in pursuance whereof, a 7-member Bench of this Court had summoned the appellant for framing of charge of contempt of Court against him. Earlier to this order a show cause notice had been issued to him under section 17(1) of the Ordinance, 2003 whereby he was called upon to show cause as to why contempt proceedings be not taken against him for not complying with the direction of this Court.

2. To recapitulate the facts of the case with background, it is to be noted that this Court in its judgment in the Sindh High Court Bar Association case (PLD 2009 SC 879) declared the actions of 3<sup>rd</sup> November, 2007 of the then President General Pervez Musharraf, and also the permanency granted to certain legislative instruments, including the National Reconciliation Ordinance, 2007 (hereinafter referred to as the NRO, 2007), to be unconstitutional, illegal, *mala fide* and *void ab initio*. However, directions were issued to the concerned authorities for placing such legislative instruments before the Parliament. Admittedly, the Parliament did not make NRO, 2007 as an Act. Subsequent thereto, in the Dr. Mobashir Hassan's case (PLD 2010 SC 265), the provisions of the NRO 2007 were declared to be *void ab initio*, being *ultra vires* and violative of the Constitution, and to be deemed to be *non est* from its inception and directions were issued to revive all the previous/pending proceedings within and outside the country for the detailed reasons mentioned therein.

3. It may not be out of context to mention here that after the promulgation of the NRO, 2007, Malik Muhammad Qayyum, the then Attorney General for Pakistan communicated/ addressed letters to various foreign fora/authorities/courts for withdrawing the requests earlier made by the Government of Pakistan for mutual legal assistance, surrendering the status of civil party, abandoning the claims to the allegedly laundered moneys lying in foreign countries, including Switzerland, which were also declared to be unauthorized and illegal communications and consequently of no legal effect. Thus, it was declared that the initial requests for mutual legal assistance for securing the status of civil party and claims launched to the allegedly laundered moneys lying in foreign countries, including Switzerland were declared never to have been withdrawn; therefore, the Federal Government and other concerned authorities were ordered to take immediate steps to seek revival of the said requests, claims and status.

4. Without going into the details in respect of the claims of the Government of Pakistan before the authorities of Switzerland, it would be appropriate to note that at the time of hearing of the petitions filed by Dr. Mobashir Hassan and others, with a view to ascertaining as to how many persons had benefited from section 33F of the National Accountability Ordinance, 1999 as inserted by section 7 of the NRO, 2007, the National Accountability Bureau (NAB) was asked to furnish the details of the same. After great deal of difficulty, a list was

provided by the Chairman NAB, which indicated that there were two categories of beneficiaries, namely, the holders of public office whose cases were pending inside and outside Pakistan in which US \$ 60 million were involved for which a request for mutual legal assistance and civil party to proceedings had been made by the Federal Government. As far as the category of beneficiaries inside Pakistan was concerned, this Court, in exercise of powers under Article 187 read with Article 190 of the Constitution directed the NAB or any other executive authority to supply requisite information. Thus, in the wake of this judgment, it was incumbent upon the Federal Government to implement the order of this Court, particularly with reference to revival of the proceedings outside the country, details whereof have been mentioned in Para 178 of the judgment (*supra*). We may observe here that this aspect of the case was not contested. Subsequent thereto, review petition was also filed against this judgment by the Federation through its counsel, which was dismissed on 25.11.2011. In the meanwhile, on different occasions, mentioning of the details whereof may not be necessary at this stage, the Federal Government and the Prime Minister being the Chief Executive were asked to implement the order, but the same was not done. Consequently, after dismissal of the review petition, again a 5-member Bench was constituted to ensure implementation of the order, *inter alia*, in respect of non-compliance of the direction of the Court for the revival of the proceedings outside the country by writing a letter, which could

only be possible under the Rules of Business by the Federal Government through the Chief Executive, but reluctance was shown. Ultimately, the Bench seized with the matter passed the order on 10.01.2012 identifying six options available to the Court, details of which find mention in the order, copy of which has been filed along with the appeal, and observed that on account of constitutional importance of the matter, request was sent to the Chief Justice to consider the desirability of its hearing by a larger Bench on the next date of hearing. Accordingly, the learned 7-member Bench so constituted passed order on 16.01.2012, relevant Para therefrom is reproduced hereinbelow: -

"4. In the circumstances, we are left with no option but in the first instance to issue show cause notice to Mr. Yousaf Raza Gillani, the Prime Minister of Pakistan, under section 17 of the Ordinance V of 2003, read with Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, as to why he shall not be proceeded against for contempt of Court for not complying the directions of this Court. He shall, in accordance with Section 17 of the Ordinance, personally appear before the Court on the next date of hearing."

In the wake of said order, a show cause notice was issued within the contemplation of section 17(1) of the Ordinance, 2003. Surprisingly, no reply was filed to the show cause notice, but the learned Bench, after providing opportunity of preliminary hearing, admittedly for almost two days, passed order on 02.02.2012, which has been challenged in the instant appeal.

5. We have heard the arguments of the learned counsel at length and have gone through the relevant documents and the case law wherein he has mainly raised following two points: -

- (a) Sufficient opportunity was not provided to the appellant through his counsel to put up his case before the Bench; and
- (b) The order has been passed without assigning any reason.

6. We have concluded, for the reasons to be recorded later, that the impugned order has been passed strictly in accordance with the provisions of section 17(1) and (3) of the Ordinance 2003 following the settled principles of the criminal administration of justice, therefore, no interference is called for. Consequently, the appeal is dismissed.

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.

MIAN SHAKIRULLAH JAN, J.

JAWWAD S. KHAWAJA, J.

ANWAR ZAHEER JAMALI, J.

KHILJI ARIF HUSSAIN, J.

TARIQ PARVEZ, J.

MIAN SAQIB NISAR, J.

AMIR HANI MUSLIM, J.

Islamabad, the  
10 February, 2012

APPROVED FOR REPORTING