

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ
MR. JUSTICE JAVED IQBAL
MR. JUSTICE MIAN SHAKIRULLAH JAN
MR. JUSTICE TASSADUQ HUSSAIN JILLANI
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE RAJA FAYYAZ AHMED
MR. JUSTICE MUHAMMAD SAIR ALI
MR. JUSTICE MAHMOOD AKHTAR SHAHID SIDDIQUI
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 ASIF SAEED KHAN KHOSA
Mr. JUSTICE SARMAJ JALAL OSMANY
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE GHULAM RABBANI

CIVIL REVIEW PETITION NO. 129/2010 IN CONST. P. NO. 76/2007

The Federation of Pakistan through Secy. M/o Law, Justice and
Parliamentary Affairs, Islamabad v. Dr. Mubashir Hassan, etc

C.M.A.100 & 101/2010 in
C.R.P.Nil/2010 in Const.P.76/2007

Malik Muhammad Qayyum v. The Federation of Pakistan, etc

C.M.A.246 & 247/2010 in
C.R.P.Nil/2010 in Const.P.76/2007

Abdul Baseer Qureshi v. Mubashir Hussain, etc

C.M.A.248 & 249/2010 in
C.R.P.Nil/2009 in Const.P.76/2007

Naveed Ahsan v. Dr. Mubashir Hassan, etc

C.M. Appeal 14/2010 in
C.M.A.Nil/2010 in Const.P.76/2007

Malik Muhammad Qayyum v. Federation of Pakistan

C.M. Appeal 77/2010 in
C.M.A.Nil/2010 in Const.P.76/2007

Dr. Danishwar Malik v. The Federation of Pakistan & others
 CRP 129/2010 etc.

For the petitioner: (CRP 129/2010)	Raja Abdul Ghafoor, AOR
Voluntarily appeared on behalf of Federation:	Mr. K.K. Agha, Addl. AGP
For the applicant/appellant: (CMA 100 & 101 & CM Appeal 14/2010)	Mr. Wasim Sajjad, Sr. ASC Mr. Arshad Ali Chaudhry, AOR
Applicant in person: (CMA 246 & 247/2010)	Mr. Abdul Baseer Qureshi, ASC Ch. Akhtar Ali, AOR (absent)
For the applicant: (CMA 248 & 249/2010)	Mr. Abdul Baseer Qureshi, ASC Ch. Akhtar Ali, AOR (absent)
	Mr. Naveed Ahsan, former Chairman, NAB
For the appellant: (CM Appeal 77/2010)	Dr. Khalid Ranjha, Sr. ASC (absent) Mr. Faiz-ur-Rahman, AOR (absent)
	Dr. Danishwar Malik, former PG, NAB
On Court notice:	Maulvi Anwarul Haq Attorney General for Pakistan
On Court call:	Syed Nasir Ali Shah, Solicitor General Ministry of Law
For the respondent No. 1: (CRP 129/2010)	Mr. Abdul Hafeez Pirzada, Sr. ASC Mr. Mehr Khan Malik, AOR
Date of hearing:	18.04.2011

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ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. – In pursuance of order dated 14.04.2011, Raja Abdul Ghafoor, learned AOR filed a copy of the letter dated 14.04.2011 written by Syed Nasir Ali Shah, Solicitor General, Ministry of Law to him, which reads as under: -

"Subject: REVIEW PETITION NO. 129/2010 TITLED
"FEDERATION OF PAKISTAN PETITIONER VS.
DR. MUBASHIR HASAN – RESPONDENT ETC."
PENDING IN THE SUPREME COURT OF
PAKISTAN

In the subject case you were nominated as AOR to represent the Federation of Pakistan. Subsequently you addressed a letter to this Division in which you expressed your inability to continue as Advocate on Record in the subject case owing to your indisposition.

As such your nomination as Advocate on Record, as per your request is withdrawn. You are requested to give letter of authority to Syed Zafar Abbas Naqvi, Advocate on Record as per Supreme Court of Pakistan Rules, 1980.

Sd/-
(Syed Nasir Ali Shah)
Solicitor General

....."

In continuation of above, he stated that he had submitted application dated 14.04.2011 requesting the concerned quarters that he may be disassociated from this case on account of indisposition. It is to be noted that he had been regularly appearing not only in this case, but also in many other cases, wherein he had filed his power of attorney on behalf of litigants as AOR and prior to this he had never pointed out about his disassociation/withdrawal on account of health reasons. It perhaps has happened in the background of the orders passed by this Court continuously, from 11.04.2011, 12.04.2011 and 14.04.2011 when the case was adjourned for one or the other reason on account of lack of interest by the Federation of Pakistan to pursue the case. The orders are self-explanatory. However, for the time being, they are not reproduced herein except that on 14.04.2011 while postponing the matter for

today's hearing when Mr. K.K. Agha, learned Additional Attorney General for Pakistan, despite showing indulgence that he may have assistance of any other counsel while arguing the case, prayed for adjournment to seek fresh instructions as it was not possible for him to make statement at that time, therefore, while loudly observing that the courts are always interested to decide cases on merits instead of withholding the relief on any technicality, but always subject to the Constitution and the law, therefore, while discussing the scheme of the Supreme Court Rules, 1980, it was observed that in fact it is the AOR who has principal duty to argue the case in absence of the ASC. Two judgments in this behalf were also cited. It seems that on having notice, the learned AOR, instead of obeying the command of the Rules, under which in absence of ASC he is responsible to argue the case, got issued above letter. When we use these words, we are supported by the record, which has been produced as per our direction by Mr. Nasir Ali Shah, Solicitor General, Government of Pakistan to see whether the letter so written by the AOR is available. On consulting the relevant file, which has also been placed for our perusal in chambers, no such letter was available. It may not be out of context to mention that when inquired from AOR before consulting the record, he stated that he had not retained copy of the letter sent by him. Interestingly, there is no note sheet in the relevant file placed for our perusal by the Solicitor as according to him letter along with the said file is missing. In view of the importance of the issue, *prima facie*,

statement so made by the Solicitor is not acceptable, inasmuch as he failed to produce extract from the office diary maintained to receive mail coming from outside the office, therefore, Raja Abdul Ghafoor, AOR in this manner, however, managed not to argue the case. Under these circumstances, Mr. K.K. Agha, Additional Attorney General for Pakistan stated that he had also no fresh instruction except that the Government be allowed to arrange another counsel. His request in this behalf has already been turned down. On this, we asked the learned Attorney General for Pakistan, the chief law officer of the country, whose appointment takes place under Article 100 of the Constitution and who also enjoys certain powers envisaged under Article 57 of the Constitution, to argue the case because he had remained associated with it, his response was that at that time he was not the Attorney General for Pakistan. We pointed out to him that the Attorney General for Pakistan who appeared at that time was invited to assist the Court in terms of Order XXVII CPC, but as in the interest of justice the Court is trying its best to proceed with the matter, he was one of the advocates in whom the Government/Federation had trust and who can address the Court. He sought time for instructions. Accordingly, on the re-assembling of the Court, we pointed out to him that who else could be the best lawyer comparing to him, he stated that some time be given to him as he has suggested a via media to the Government, which he did not want to disclose before us. Therefore, at his request, case is adjourned to 19.04.2011.

As Raja Abdul Ghafoor, AOR has shown his inability to continue as AOR on account of indisposition as is evident from the above letter, let a show cause notice be issued to him to explain as to why his name be not removed from the roll of the Advocates-on-Record in terms of Order IV rule 31 of the Supreme Court Rules, 1980. Similarly, let a show cause notice be issued to Mr. Nasir Ali Shah, Solicitor General, Ministry of Law to explain as to why he made an incorrect statement before the Court, as a result whereof he had not only embarrassed the whole institution, but also the Federal Government and why an appropriate recommendation as envisaged by the law be not made against him.

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.

JAVED IQBAL, J.

MIAN SHAKIRULLAH JAN, J.

TASSADUQ HUSSAIN JILLANI, J.

NASIR-UL-MULK, J.

RAJA FAYYAZ AHMED, J.

MUHAMMAD SAIR ALI, J.

MAHMOOD AKHTAR SHAHID SIDDIQUI, J. JAWWAD S. KHAWAJA, J.

ANWAR ZAHEER JAMALI, J.

KHILJI ARIF HUSSAIN, J.

TARIQ PARVEZ, J.

MIAN SAQIB NISAR, J.

ASIF SAEED KHAN KHOSA, J.

SARMAD JALAL OSMANY, J.

AMIR HANI MUSLIM, J.

GHULAM RABBANI, J.

Islamabad,

April 18, 2011

APPROVED FOR REPORTING