

IN THE SUPREME COURT OF PAKISTAN
(Advisory Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ
MR. JUSTICE MIAN SHAKIRULLAH JAN
MR. JUSTICE TASSADUQ HUSSAIN JILLANI
MR. JUSTICE NASIR-UL-MULK
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 SARMAJAL JALAL OSMANY
MR. JUSTICE AMIR HANI MUSLIM

REFERENCE NO. 1 OF 2011

[REFERENCE BY THE PRESIDENT OF THE ISLAMIC
REPUBLIC OF PAKISTAN UNDER ARTICLE 186 OF
THE CONSTITUTION TO REVISIT THE CASE OF
ZULFIQAR ALI BHUTTO REPORTED AS PLD 1979 SC
38 & 53]

On behalf of President:	Mr. Babar Awan, Sr. ASC
On Court notice:	Moulvi Anwarul Haq Attorney General for Pakistan Mr. Dil Muhammad Khan Alizai, DAG Mr. Amanullah Kanrani, AG, Balochistan Mr. Asadullah Chamkani, AG, KPK Mr. Jawad Hassan, Addl. AG, Punjab Mr. Miran Muhammad Shah, Addl. AG, Sindh
<i>Amicus Curiae:</i>	Ch. Aitzaz Ahsan, Sr. ASC Mr. Makhdoom Ali Khan, Sr. ASC Mr. Abdul Latif Khan Afridi, ASC Mr. Ali Ahmad Kurd, ASC Mr. Yasin Azad, ASC/President, SCBA
Complainant:	Mr. Ahmad Raza Khan Kasuri, Sr. ASC (in person)
In CMA No. 1629/2011	<i>Nemo.</i>
In CMA No. 1758/2011	<i>Nemo.</i>

Date of hearing: 17.01.2012

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ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. – On

05.01.2012, an order was passed but instead of repeating the facts noted therein, the said order is reproduced hereinbelow *in extenso*: -

"Dr. Babar Awan was enrolled as Advocate of this Court on 29.05.2000 and status of Sr. ASC was conferred upon him on 29.05.2008. Presently, he is appearing in Reference No. 1 of 2011 sent by the President of Pakistan under Article 186 of the Constitution. Hearing of the Reference, considering it to be one of the most important matters, is pending in this Court for the last few months. On 04.01.2012, a notice of contempt of Court was issued to him by a Bench of this Court comprising two Hon'ble Judges in respect of a press conference addressed by him on 01.12.2011. After receipt of notice, he addressed the electronic media at the podium of the Supreme Court Gate and perhaps when inquired from him about issuance of the notice, he stated that in the past too, criminal cases were registered against him when he was conducting the cases of Mohtarama Benazir Bhutto and the incumbent President Mr. Asif Ali Zardari and concerning the contempt notice issued to him, he uttered the following words: -

"نوٹس ملایا، لکھ نہ پایا، کیوں سو بنیاں نال رکھا کراں، میں لکھ واری بسم اللہ کراں۔"

This utterance made on the electronic media was telecast by different channels, which believably had been seen by a large number of people. The content of the utterance, the gestures made and the body language were indicative of an attempt to ridicule the Court. We have inquired from Dr. Babar Awan about it, who instead of denying the same, stated that the words uttered on the television in fact reflected respect. To fully appreciate the content and the manner of what he said, we asked the Secretary Information to make arrangement for displaying the

relevant video clips. Accordingly, on multimedia affixed in the courtroom, DVD was played which was not only watched by the senior members of the bar, but also by Mr. Yasin Azad, President, Supreme Court Bar Association and Mr. Latif Afridi, Vice Chairman, Pakistan Bar Council. Both of them have condemned the same. Mr. Latif Afridi went to the extent of saying that these things should not have happened and in any case he would stand by the judiciary in the matter. We believe that interaction between the Bench and the Bar depends upon mutual respect. Irrespective of the fact which Bench issued the notice, the fact remains that it was part of the judiciary, therefore, a person who is a senior counsel appearing before the Supreme Court, instead of uttering the words reproduced above and making gestures as if he had no care for the issuance of the notice because prior to the utterance under consideration, he said that in the past too he had been charged with criminal cases for conducting the cases of Mohtarama Benazir Bhutto and Asif Ali Zardari. We do not know those facts, but *prima facie*, we are of the view that the conduct of Dr. Babar Awan is unbecoming of an Advocate of the Supreme Court, therefore, we issue notice to him under Rule 30 of Order IV of the Supreme Court Rules, 1980 to explain as to why his name be not removed from the Roll of the Advocates of this Court.

2. Registrar is directed to hand over copies of the notice and the DVD to Dr. Babar Awan, which shall be furnished to him by the Secretary Information during the course of the day. He may file reply to the notice on or before 09.01.2012. Proceedings of the Reference are also postponed till the next date of hearing."

2. In compliance with the above order, notice was issued to Mr. Babar Awan, Sr. ASC, which was served upon him reportedly on 05.01.2012 as the case was fixed for hearing on 09.01.2012, but the same could not be taken up due to unavoidable circumstances, as such, it was postponed for today.

3. Mr. Babar Awan, Sr. ASC has appeared and has stated that he needs some time to engage a counsel. It has been pointed out to him that more than sufficient time has already been granted to him and as this Bench is seized with one of the most important cases, i.e., the Reference sent by the President of Pakistan under Article 186 of the Constitution concerning the death sentence awarded to late Zulfikar Ali Bhutto, former Prime Minister of Pakistan. Therefore, we have to proceed with the case, as early as possible, without causing delay in any manner and unless the question of notice, which has been issued to him under Order IV rule 30 of the Supreme Court Rules, 1980 is decided, it would not be appropriate to proceed with the Reference. It may not be out of place to mention here that on the last date of hearing when the order dated 05.01.2012 was passed, video clips were repeatedly displayed in the Courtroom in the presence of Mr. Babar Awan, Sr. ASC wherein he had uttered certain words/made gestures after receipt of the contempt of Court notice issued to him by a Bench of two Hon'ble Judges of this Court with a view to show a degree of hatred by him. After seeing the video clips, the members of the legal fraternity present in the Courtroom and in particular, Mr. Latif Afridi, Vice Chairman, Pakistan Bar Council and Mr. Yasin Azad, President, Supreme Court Bar Association, voluntarily came to the rostrum and condemned the above words and gestures of Mr. Babar Awan. Mr. Latif Afridi went to the extent of saying that such things ought not to have happened, and that, in any case, they would stand by the judiciary in the matter.

4. We have already observed that good relationship between the Bench and the Bar depends upon mutual respect. This institution, being the apex Court under the Constitution, deserves to be respected by all concerned, particularly the Advocates and the members of the

legal fraternity to whom licences are issued for appearing before this Court. If the institution like the Supreme Court is not respected and an attempt is made to lower its prestige in the eyes of the general public, then it would be very difficult to administer justice because this is the Court whose working/decisions send a message down to the Court of the Magistrate and the Civil Judge that they should administer justice without fear or favour, and if the Court is maligned by anyone, then it would not be possible to maintain its dignity and status.

5. We have been informed that it is not the first time that Mr. Babar Awan has been issued contempt of Court notice by a 2-Member Bench of this Court, but prior to it also, the Lahore High Court had issued similar notices to him. He had been appearing before this Court and this Court has always respected him, but the attitude shown by him on 04.01.2012 after receipt of notice, details of which have been mentioned hereinabove, compelled this Court to issue a notice to him in terms of Order IV rule 30 of the Supreme Rules, 1980. However, without dilating further upon the matter, in order to provide him fair opportunity, we grant him time to file reply, but at the same time to ensure dignity and respect of the Court, we temporarily suspend his licence to appear before this Court. And, no sooner he has engaged a counsel and filed the reply, he would make a request to the Registrar for the purpose of taking up this matter.

6. As far as the Presidential Reference is concerned, we ask the learned Attorney General for Pakistan to inform the President of Pakistan that in view of the order dated 05.01.2012 and today's order, the licence of Mr. Babar Awan, Sr. ASC has temporarily been suspended, therefore, it would be appropriate if another counsel is appointed to address arguments in the Reference, which indeed is one of the most important cases in the history of this Court.

7. The Registrar is directed to collect the enrolment files of Mr. Babar Awan from the Pakistan Bar Council and the Punjab Bar Council where he was enrolled as Advocate of the High Court as well as the judicial files in pursuance whereof he was issued contempt of Court notices by the Lahore High Court, so that we may know the result thereof.

8. The case is adjourned to a date in office and shall be taken up no sooner the President of Pakistan nominates another counsel to address this Court in the Reference.

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.

MIAN SHAKIRULLAH JAN, J.

TASSADUQ HUSSAIN JILLANI, J.

NASIR-UL-MULK, J.

JAWWAD S. KHAWAJA, J.

ANWAR ZAHEER JAMALI, J.

KHILJI ARIF HUSSAIN, J.

TARIQ PARVEZ, J.

MIAN SAQIB NISAR, J.

SARMAD JALAL OSMANY, J.

AMIR HANI MUSLIM, J.

Islamabad, the
17th January, 2012

APPROVED FOR REPORTING