

**IN THE SUPREME COURT OF PAKISTAN**

(Original Jurisdiction)

Present:

**Mr. Justice Iftikhar Muhammad Chaudhry, CJ.**

**Mr. Justice Jawwad S. Khawaja**

**Mr. Justice Khilji Arif Hussain**

**CONSTITUTION PETITION NO.77 OF 2010**

(President Balochistan High Court Bar Association

vs.

Federation of Pakistan, etc.

**AND**

**H.R.C. NO.13124-P/2011**

(Application by Altaf Hassan Qureshi)

**AND**

**H.R.C. No. 40403-P/2011**

(Application by Syed Majeed Zaidi)

**AND**

**H.R.C. No. 40220-G/2011**

(News clipping)

**AND**

**H. R. C. No. 43103-B/2011**

(Application by Haji Abdul Qayyum)

**AND**

**H.R.C. 27045-K & 27619-G/12**

(Abduction of Dr. Ghulam Rasool)

**AND**

**C.M.A. No. 42-43 OF 2012.**

(Enquiry report of Kharootabad Incident)

**AND**

**C.M.A. NO.178-Q OF 2012**

(Appeal for missing persons cases of Balochistan)

**AND**

**C.M.A. NO. 219-Q OF 2012.**

(Application by Maj. (R) Nadir Ali)

**AND**

**C.M.A. NO. 431-Q OF 2012.**

(Target Killing of Mr. Zulfiqar Naqvi, ASJ)

**AND**

**CONSTITUTION PETITION NO.107 OF 2012**

Nawabzada Talal Akbar Bugti

VS.

Federation of Pakistan, etc

For the petitioner(s)

Mr. Kamran Murtaza, ASC

Malik Zahoor Shahwani, Advocate/

President Balochistan High Court Bar.

Mr. Sajid Tareen, Advocate/Vice President

Mr. Hadi Shakeel Ahmed, ASC *(in Const.P#107 of 2012)*

For the Applicants/ :

Mr. Salahuddin Mengal, ASC (in CMA 253-Q/12)

(complainants) Mr. Nasrullah Baloch, (In CMA 178-Q/12)  
Maj. Nadir (in CMA 219-Q/12)

**Amicus Curiae:** Mr. M. Zafar, Sr.ASC

For Fed. of Pakistan: Malik Sikandar Khan, DAG

For M/o Defence: Mr. Asif Yasin Malik, Secretary  
Mr. M. Irfan, Wing Commander/Director (L)

For Govt. of Balochistan: Mr. Amanullah Kanrani, A.G.  
Mr. Babar Yaqool Fateh Muhammad, Chief Secy.  
Mr. Naseebullah Bazaie, Home Secretary  
Mr. Tarik Umer Khattab, IGP

Mr. Kambar Dashti, Commissioner Quetta  
Mr. Hussain Karar Kh. Addl. IGP  
Mir Zubair Mehmood, CCPO, Quetta.  
Mr. Hamid Shakeel, DIG (Investigation)  
Mr. Saleem Lehri, DIG/CID

For IG FC: Raja Muhammad Irshad, Sr. ASC  
Major Sohail, HQ, FC  
Major Shahid, FC

For Mobile Operators: Nemo.

For PTA : Syed Ikhtlaq Hussain Musavi, Zonal Director.

Date of hearing : 08.09.2012.

### **ORDER**

**Iftikhar Muhammad Chaudhry, CJ.** The Secretary Home stated at the bar that Farhan s/o Ahmar Din Agha aged about 15 years, despite of hectic efforts so far had not been recovered. However, further efforts are under way to achieve the object.

2. The Commandant FC, Dera Bugti is not in attendance. Maj. Sohail, DAG, HQ, FC stated that IG, FC has cancelled his leave on 7.9.2012 informed him about the order of the Court. He was in his native place Malakand from where according to their information he has left by road. However, we have directed Maj. Sohail to place on record the order of the cancellation of the leave and the time when the same was dispatched to him so we may ascertain that despite the

directions as to why he is not in attendance. Maj. Sohail has filed the order of cancellation of leave of the Commandant which is to the following effect:

*"CANCELLATION OF LEAVE (.) LEAVE IN RESPECTS OF PA – 28344 COLONEL ARSHAD HUSSAIN, COMMANDANT BAMBORE RIFLES FROM 31 AUGUST TO 15 SEPTEMBER 2012 HAS BEEN CANCELLED (.) APPROACH THE OFFICER TO REPORT HQ FC QUETTA FORTHWITH (.) FOR GHQ AGs' BRANCH PS DTE ONLY (.) REQUEST APPROACH OFFICER THROUGH UNITS DEPLOYED IN 11 CORPS AREA OF RESPONSIBILITY FOR CANCELLATION OF LEAVE CMM REPORT TO HQ FC WITH IMMEDIATE EFFECT (.) MATTER MOST URGENT".*

3. Kaho, the person who is disappeared, has also not been produced despite of our directions. Appropriate orders in this behalf shall be passed on the appearance the Commandant FC, Dera Bugti. In the meanwhile, directions are repeated to the Commandant to affect the recovery of Kaho and produce him before the Court without fail.

4. To be loyal to the State is the basic duty of all citizen and they have to be obedient to the Constitution and the law, wherever they may be. Similarly, it is also inviolable obligation of every person for the time being within Pakistan. Thus, adherence to the Constitution and the Law by the citizens, who are officials or otherwise, is mandatory. Non-compliance of the Constitution and the Law makes a citizen liable for action, in accordance with law. Government is bound to enforce fundamental rights in the context of the scenario in Balochistan, providing security of life, property and liberty, in accordance with law. Non enforcement of such rights of the citizens calls for the superior Courts to issue directions to the Federal as well as Provincial Governments to protect the life and property of all the citizens equally.

5. Hearing of these petitions on different dates, from time to time has persuaded us to issue directions to the Federal and the Provincial Governments through their Chief Executives, the President and the Governor respectively to make commitment, to which they are obliged to fulfill under the Constitution as well as in terms of the statement so made on their behalf on 31<sup>st</sup> July, 2012 by filing a written statement, which reads thus:-

*"In compliance of Hon'ble Supreme Court of Pakistan order dated 24<sup>th</sup> July, 2012, passed in the subject petition, the Federation of Pakistan and Government of Balochistan submit as under:-*

*That the Federation and the Provincial Government are highly conscious about their constitutional obligations with regard to the security of life and property of citizens as envisaged in Article 9 of the Constitution of Islamic Republic of Pakistan.*

*That the Federation and Provincial Government through their LEAs and intelligence Agencies will make all out efforts to ensure early and safe recovery of missing persons, take steps and measures to identify and arrest the culprits involved in the target/sectarian killings, kidnapping for ransom and put them to justice and will further strengthen/enhance the level of coordination at the highest level amongst the different stakeholders to efficiently discharge with their constitutional obligations and restore peace and harmony amongst all the segment of society in the province and create conducive environment for the economic development, well being and prosperity of the Province.*

*Sd/-  
Secretary  
M/o Interior  
Islamabad*

*Sd/-  
Secretary  
M/o Defence  
Rawalpindi*

*Sd/-  
Chief Secretary  
Govt. of Balochistan*

*Sd/-  
Inspector General of Police  
Balochistan*

*Sd/-  
Secretary Home &  
Tribal Areas Deptt. Quetta"*

*Sd/-  
IG, FC*

6. 3rg 1.t had been endeavo3rg 1.ing to exercise restraint at all levels, inasmrg 1ch as not taking interest of the Federation to provide assistance through the Attorney General has also been tolerated by following the one mechanism or the other. The invo3lvement of the functionaries as per the contents of the written statement, noted hereinabove, was nothing but to apprise them about their constitutional obligations. Unfo.tunately, both Federal and the Provincial

Governments avoided for one or the other reason to honour the above statement.

As a result whereof:-

1. No missing person has been recovered;
  2. Target killing of innocent citizens, particularly for sectarian consideration including killing of the members of the *Ahl-e-Tasheih* and other denominations continue and day by day its numbers are increasing;
  3. An Additional District Judge and two senior Police Officers had been killed alongwith so many other members of the law enforcing agencies including the Police, F.C., Levies and Costal Guards but without adopting preventive measures by both the Governments;
  4. Abduction for ransom in the province of Balochistan has become a trade and this offence is being committed everywhere in the province, inasmuch as the professionals like the doctors and teachers are not safe. The people do come back on their own after paying ransom from their pockets. The children, both male and female are reportedly being kidnapped for which, as well, no resistance has been shown.
- 
7. Inspector General of Police had submitted report, which is self explanatory.
  8. The Secretary Defence was involved to achieve multiple purposes including to assist civil administration and to ensure that if anyone, as alleged, is in the custody of the agencies, he may facilitate their release, as the citizens are alleging involvement of the F.C. and other agencies in this behalf but he had not shown any seriousness except attending the Court on 06.9.2012 and left for Islamabad without any excuse. He appeared today as per directions and had filed statement in writing.
  9. The Secretary Interior, despite clear directions, failed to attend either on the ground of his illness or being busy in some meeting over there.
  10. The Chairman F.B.R. was also asked to attend the Court as it is general impression that on account of availability of massive arms & ammunitions and non-custom paid vehicles (kabali) the offence of missing persons, target killing as

well sectarian killing and abduction etc. is committed with such vehicles. Unfortunately allegation is against the agencies like ISI, MI etc. which are issuing *Rahdaries* to the persons who possess prohibited arms & ammunitions in non-custom paid vehicles and whenever any law enforcing agency apprehend them, they put up resistance on the basis of *Rahdaries* and go scot free.

11. These are the facts, which are the root causes for non-implementation of the Constitution and the Law.

12. Attendance of Attorney General, in view of the facts and circumstances noted in the order dated 4<sup>th</sup> May, 3<sup>rd</sup> September, 4<sup>th</sup> September and 5<sup>th</sup> September, 2012 had been made conditional and no request from him nor either of these Secretaries had been made to allow him to attend the Court, therefore, we direct the Chief Secretary of the government of Balochistan to bring all these facts in the notice of the Prime Minister, Governor as well as the Chief Minister and the Head of the Agencies and outcome of this discussion be reported to us at Islamabad on 19<sup>th</sup> September, 2012. All the functionaries, who had signed the statement, reproduced hereinabove, are directed to remain in attendance.

Chief Justice

Judge

Judge

Quetta,  
8<sup>th</sup> September, 2012  
Nisar/\*

Not approved for reporting.