

IN THE SUPREME COURT OF PAKISTAN
(CONTEMPT JURISDICTION)

PRESENT:

MR. JUSTICE MAHMOOD AKHTAR SHAHID SIDDIQUI
MR. JUSTICE JAWWAD S. KHAWAJA
MR. JUSTICE KHILJI ARIF HUSSAIN
MR. JUSTICE TARIQ PERVEZ

Crl. Misc. As. Nos. 01 & 02 of 2011 in
Crl. Org. Nos. 97 & 98 of 2009.

In the matter of Mr. Justice Hasnat Ahmad Khan.
In the matter of Mr. Justice Syed Shabbar Raza Rizvi

Date of hearing: 26.01.2011

O R D E R

M.A.SHAHID SIDDIQUI, J.- Justice Hasnat Ahmad Khan and
Justice Syed Shabbar Raza Rizvi have filed these identical applications
in which the following prayer has been made:-

“(i) Mandate of Article 10-A to be read with Article 25, 4 and 9 of the Constitution of Pakistan fulfilled to treat the petitioner similarly as functionaries, graciously treated mentioned in sub-para No.(i) and (iii) of restraint order dated 03.11.2007.

(ii) For purposes of due process a notice of the same kind as has been served on the present petitioner and other judges be also served on the functionaries enumerated in sub-paras (i) and (iii) of Restraint Order dated 3.11.2007.

(iii) Further proceedings in the above-noted Case may be adjourned till service of notice on the enumerated category so that the petitioner is treated alike.

(iv) Even for purposes of due process, the functionaries who have played major role are to be treated in the same fashion as the petitioner whose role is merely for taking oath arranged for him and other judges by other functionaries.

(v) Any other relief deems suited to the peculiar facts of this case may also be granted.”

2. It has been asserted by learned counsel representing the said applicants/respondents Mr. Shabbar Raza Rizvi & Mr. Hasnat Ahmad Khan that notices be issued to other persons mentioned in paras (i) and (iii) of the order dated 3.11.2007 including the then COAS and President General Pervez Musharraf and the then Prime Minister Mr. Shaukat Aziz because these persons are equally liable for disobeying the order passed by seven-member Bench of this Court on 3.11.2007. We have considered the submissions of learned counsel and have also noted the contents of these applications and *prima facie* find substance in the same. We also find that the contempt alleged against these persons is primarily consequent to issuance of the three instruments viz. Proclamation of Emergency, PCO and Oath of Office (Judges) Order, 2007 and thereby launching an assault on the independence of the Judiciary. It appears, *prima facie*, that these instruments were issued prior to the passing of the order dated 3.11.2007 and not in disobedience of the same. Therefore, the case for contempt of Court these persons will have to answer is materially different from the charge to be faced by the respondents which arises on account of their disobedience of the order passed by the seven member Bench of this Court on 3.11.2007. The proceedings therefore, against the aforesaid persons may proceed independently and on their own facts, either before this Bench or before some other Bench as may be determined by the Hon'ble Chief Justice of Pakistan. It is, in our opinion, quite unnecessary to link or club the proceedings against the respondents with those which may be taken against the above named persons.

3. The office is accordingly directed to place copies of this order and these applications before the Hon’ble Chief Justice of Pakistan for necessary orders.

Judge

Judge

Judge

Judge

Islamabad,
A.Rehman

Announced on 02.02.2011.

APPROVED FOR REPORTING.