

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ

MR. JUSTICE MIAN SHAKIRULLAH JAN

MR. JUSTICE TASSADUQ HUSSAIN JILLANI

MR. JUSTICE JAWWAD S. KHAWAJA

MR. JUSTICE TARIQ PARVEZ

MR. JUSTICE MIAN SAQIB NISAR

MR. JUSTICE EJAZ AFZAL KHAN

MR. JUSTICE IJAZ AHMED CHAUDHRY

MR. JUSTICE MUHAMMAD ATHER SAEED

CONSTITUTION PETITIONS NO. 77 TO 85 & 89 OF 2011

& CMA NO. 5505/2011 IN CONST. P. 79 OF 2011

[Constitution Petition under Article 184(3) of the Constitution regarding alleged Memorandum to Admiral Mike Mullen by Mr. Hussain Haqqani, former Ambassador of Pakistan to the United States of America]

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Watan Party ... PETITIONER

[CP 77/2011]

M. Tariq Asad Advocate Supreme Court ... PETITIONER

[CP 78/2011]

Muhammad Nawaz Sharif ... PETITIONER

[CP 79/2011]

Senator Muhammad Ishaq Dar &
another ... PETITIONERS

[CP 80/2011]

Iqbal Zafar Jhagra & another ... PETITIONERS

[CP 81/2011]

Lt. General ® Abdul Qadir Baloch & 2 others ... PETITIONERS

[CP 82/2011]

Raja Muhammad Farooq Haider Khan & another... PETITIONERS

[CP 83/2011]

Syed Ghous Ali Shah & 2 others ... PETITIONERS

[CP 84/2011]

Hafeez Ur Rahman ... PETITIONER

[CP 85/2011]

Shafqatullah Sohail ... PETITIONER

[CP 89/2011]

VERSUS

Federation of Pakistan & others ... RESPONDENTS

For the petitioners: Barrister Zafarullah Khan, ASC in person

Mr. Tariq Asad, ASC in person

Mr. Rashid A. Rizvi, Sr. ASC

Senator Muhammad Ishaq Dar &

Khawaja Muhammad Asif, MNA in person

Mr. Muhammad Rafiq Rajwana, ASC

Mr. Attique Shah, ASC

Dr. M. Salahuddin Mengal, ASC

Sardar Asmatullah Khan, ASC

Syed Ghous Ali Shah, ASC

Dr. M. Shamim Rana, ASC

Mr. M.S. Khattak, AOR

For the President of Pakistan: *Nemo.*

For the Prime Minister of Pakistan: *Nemo.*

For Chief of Army Staff,	Maulvi Anwar-ul-Haq
DG, ISI & M/O of Cabinet,	Attorney General for Pakistan
Defence, Foreign Affairs,	Mr. Dil Muhammad Alizai, DAG
Interior & Law:	

For Hussain Haqqani:	Ms. Asma Jahangir, ASC
	Ch. Akhtar Ali, AOR

For Mansoor Ijaz: *Nemo.*

Date of hearing: 23.12.2011

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ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. – M/S Senator

M. Ishaq Dar, Khwaja Muhammad Asif, MNA, Malik Muhammad Rafiq Rajwana, Atiq Shah, Dr. Salahuddin Mengal, Sardar Asmatullah Khan, Syed Ghous Ali Shah and Dr. M. Shamim Rana ASCs have concluded arguments on the maintainability of the petitions.

2. The learned Attorney General has stated that in pursuance of order dated 19.12.2011, the Federation of Pakistan through Secretaries, Law, Foreign Affairs, Interior and Cabinet Divisions is in the process of preparing affidavits, which exercise is likely to be completed in the course of the day. He, therefore, suggested that in view of the queries being raised by the Court, it would be appropriate if he starts arguments on behalf of the Federation after filing of the affidavits.

3. The learned Attorney General has also placed on record under his own signature following statement on behalf of the Prime Minister: -

1. The Prime Minister has highest regards for the Hon'ble judiciary and has been striving throughout his political life for independence of judiciary. The first step performed by him as Prime Minister was to order the release of detained Hon'ble Judges and thereafter to restore them.
2. The Prime Minister is of the view that in the Press Conference, the stance of the party was expressed in historical perspective and was not at all intended to ridicule the judiciary.
3. The Prime Minister has instructed me to assure the court that his government believes in supremacy of Constitution and rule of law and will always stand firmly for the same.

4. We have pointed out to the learned Attorney General that the reply purportedly filed by him on behalf of the Prime Minister is evasive because there should be categorical stand taken by the Prime Minister or the Federal Government in this behalf instead of shifting the burden upon the political party under the garb of historical perspective. Whereas contrary to it, the President of Pakistan, who himself is the Co-Chairperson of the Party in Government, i.e. the Pakistan Peoples Party, while submitting Reference No. 1 of 2011 under Article 186 of the Constitution under the caption "Revisit the case of Zulfikar Ali Bhutto" has recognized and accepted that the judiciary in Pakistan is independent and is playing a proactive role in the cases of public importance, which suggests that instead of making an ambiguous statement, the Federation/Federal Government ought to have taken a clear stand. The reply so filed is not acceptable. However, the learned Attorney General shall seek fresh instructions from the Prime Minister and file a comprehensive reply on the next date of hearing. We are of the opinion that government premises could not be allowed to be used for holding a press conference wherein, *prima facie*, the judiciary was ridiculed and insulted.

5. The learned Attorney General has stated that since he has a pre-scheduled meeting/commitment on 25.12.2011 at Karachi and he may not reach Islamabad on 26.12.2011, therefore, he has requested that the case be adjourned to 27.12.2011. Order accordingly.

Islamabad, the

23rd December, 2011