

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Javed Iqbal
Mr. Justice Sardar Muhammad Raza Khan
Mr. Justice Khalil-ur-Rehman Ramday
Mr. Justice Mian Shakirullah Jan
Mr. Justice Tassaduq Hussain Jillani
Mr. Justice Nasir-ul-Mulk
Mr. Justice Raja Fayyaz Ahmed
Mr. Justice Ch. Ijaz 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 Rahmat Hussain Jafferri
Mr. Justice Tariq Parvez
Mr. Justice Ghulam Rabbani

CONSTITUTION PETITION NOS. 76 TO 80 OF 2007 & 59/2009,

AND

CIVIL APPEAL NO. 1094 OF 2009

(On appeal from the order dated 15.1.2009 passed
by High Court of Sindh at Karachi in
Const.P.No.355 of 2008)

AND

HRC NOS.14328-P TO 14331-P & 15082-P OF 2009

Dr. Mobashir Hassan	(Const.P.76/07)	
Roedad Khan	(Const. P.77/07)	
Qazi Hussain Ahmad	(Const.P.78/07)	
Muhammad Shahbaz Sharif	(Const.P.79/07)	
Muhammad Tariq Asad	(Const.P.80/07)	
Syed Feroz Shah Gillani	(Const.P.59/09)	
Fazal Ahmad Jat	(C.A.1094/09)	
Shaukat Ali	(H.R.C.14328-P/09)	
Doraiz	(H.R.C.14329-P/09)	
Zulqarnain Shahzad	(H.R.C.14330-P/09)	
Abid Hussain	(H.R.C.14331-P/09)	
Manzoor Ahmad	(H.R.C.15082-P/09)	
	Petitioners.
Versus		
Federation of Pakistan, etc.	Respondents.

For the petitioners : Mr. Abdul Hafeez Pirzada, Sr. ASC.
Mr. Suleman Akram Raja, ASC.
Mr. Ejaz Muhammad Khan, AOR.
Assisted by:
Abdul Mujeeb Pirzada, Sr.ASC
Mr. M.Afzal Siddiqui, ASC
Mian Gul Hassan Aurangzeb, ASC
Mr. Sikandar Bashir Mohmand, ASC
Barrister Feroze Jamal Shah, Adv.
Mr. Hameed Ahmeed, Adv.
Mr. Mustafa Aftab Sherpao, Adv.
Mr. Sameer Khosa, Adv.
Mr. Umar Akram Chaudhry, Adv.
Malik Ghulam Sabir, Adv.
(in Const. P. 76/2007)

Mr. Muhammad Ikram Ch. ASC.
Mr. G. N. Gohar, AOR.
(in Const. P. 77/2007)

Dr. Farooq Hassan, Sr.ASC
Mr. Hashmat Ali Habib, ASC
Ch. Muhammad Akram, AOR
(in Const.P.78/07)

Mr. Ashtar Ausaf Ali, ASC
(In Const.P.79/07)

Mr. Tariq Asad, ASC (in person)
(In Const.P.80/07)

Mr. A.K. Dogar, Sr. ASC
(In Const.P.59/09)

Mr. Shahid Orakzai (in person)
(In CMA 4842/09)

Raja Muhammad Ibrahim Satti, Sr. ASC
(in CA.1094/2009)

NEMO (in HR.Cases)

For the Respondents:

For M/o Law : Mr. Kamal Azfar, Sr. ASC. Assisted by
Mr. K.K. Agha, ASC.
Raja Abdul Ghafoor, AOR.
(in Const.P.76-77/07)

Raja Abdul Ghafoor, AOR.
(in Const.P.78-80/07 & 59/09)

For the NAB : Dr. Danishwar Malik, PG.
Mr. Abdul Baseer Qureshi, Addl: PG
Dr. Asghar Rana, ADPG,
Ch. Akhtar Ali, AOR.
Mr. Naveed Ahsan, Chairman NAB

- On Court Notice : Mr. Shah Khawar,
Acting Attorney General for Pakistan.
Assisted by:
Agha Tariq Mehmood Khan, DAG.
Mr. Dil Muhammad Alizai, DAG.
Raja Aleem Abbassi, DAG.
- For Govt. of Balochistan : Dr. Salahuddin Mengal, AG.
- For Govt. of NWFP. : Mr. Zia-ur-Rehman, A.G.
Mr. Zahid Yousaf, Addl. A.G.
Mr. Naveed Akhtar, A.A.G.
- For Govt. of the Punjab : Mr. M. Hanif Khattana, Addl: AG.
Ch. Khadim Hussain Kaiser, Addl: AG.
- For Govt. of Sindh : Mr. Yousaf Leghari, AG.
- On Court's Call: : Malik Muhammad Qayyum, Sr. ASC
Former Attorney General for Pakistan
- Mr. Justice (R) M. Riaz Kiani
Secretary Law & Justice.
Dr. Riaz Mehmood, Sr. Joint Secretary.
Syed Nasir Ali Shah, Solicitor General.
- Mr. M. Salman Faruqi,
Principle Secretary to the President.
- Amicus Curiae : Mian Allah Nawaz, Sr. ASC.
Mr. Shaiq Usmani Sr. ASC.
Mr. M. Sardar Khan, Sr. ASC.
Assisted By Mr. Idrees Ashraf, Adv.
- Dates of hearing : 07th -10th & 14th - 16th December, 2009.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. – The above titled Constitution Petitions have been filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan [hereinafter referred to as ‘the Constitution’] challenging the constitutionality of the National Reconciliation Ordinance (No.LX) 2007 [hereinafter referred to as ‘the NRO’], while HR cases and Civil Appeal, by leave of the Court, have been filed by the applicants/appellant for extension of benefit of the NRO to them.

2. Succinctly stating the facts, giving rise to instant proceedings, are that on 5th October, 2007, the President of Pakistan, in purported exercise of powers conferred by clause (1) of Article 89 of the Constitution, issued the NRO, whereby, certain amendments have been made in the Criminal Procedure Code, 1898, the Representation of the People Act, 1976 and the National Accountability Ordinance, 1999 [hereinafter referred to as “the NAB Ordinance”]. By means of Section 2 of the NRO, Section 494 of Cr.P.C. has been amended. Likewise, vide Section 3 of the NRO, Section 39 of the Representation of the People Act, 1976 has been amended. Similarly, Sections 4, 5 & 6 of the NRO amended Sections 18, 24 and 31A of the NAB Ordinance, respectively, whereas by means of Section 7 of the NRO, Section 33F has been inserted in the NAB Ordinance.

3. The NRO came under challenge, as stated above, before this Court, through listed petitions. These petitions came up for hearing before the Court on 12th October, 2007 when after hearing the learned counsel for the petitioners, the Court proceeded to issue notices to the respondents as well as to Attorney General for Pakistan, for a date in office after three weeks, while making the following observation:-

“however, we are inclined to observe in unambiguous terms that any benefit drawn or intended to be drawn by any of the public office holder shall be subject to the decision of the listed petitions and the beneficiary would not be entitled to claim any protection of the concluded action under Sections 6 and 7 of the impugned Ordinance, under any principle of law, if this Court conclude that the impugned Ordinance and particularly its these provisions are ultra vires the Constitution”.

4. Pending decision of these petitions, on 3rd November, 2007, emergency was proclaimed in the country by the then President of Pakistan and also the Chief of Army Staff and under the garb of Provisional Constitution Order, 2007, Provisional Constitution (Amendment) Order,

2007 was issued, whereby, Article 270AAA was inserted in the Constitution, which provided protection to all the laws including the Ordinances in force on the day on which the Proclamation of Emergency of 3rd November 2007 was revoked. As a result of above constitutional amendment, the apparent interest was that the NRO should attain permanence. The Proclamation of Emergency as well as other extra-constitutional instruments were challenged before this Court in the case of **Tikka Iqbal Muhammad Khan v. General Pervez Musharraf** (PLD 2008 SC 178), when the Court declared the Proclamation of Emergency of 3rd November, 2007, the Provisional Constitution Order, 2007, Provisional Constitution (Amendment) Order, 2007, the Oath of Office (Judges) Order, 2007 and the President's Order No.5 of 2007, to be validly enacted. However, this Court, vide its judgment dated 31st July 2009, in the case of **Sindh High Court Bar Association v. Federation of Pakistan** (PLD 2009 SC 879) declared all the above five instruments to be unconstitutional, illegal and void *ab initio*, as a result whereof Article 270AAA stood deleted from the Constitution. Consequently, the NRO, as well as 37 other Ordinances, which were meant to be protected, were shorn of the permanency purportedly provided under Article 270AAA of the Constitution and sanctified by the judgment passed in **Tikka Iqbal Muhammad Khan's case** (ibid). However, through the same judgment, this Court, while supporting the doctrine of trichotomy of powers, as envisaged in the scheme of the Constitution and to prevent any disruption, enabled the Parliament to reconsider and, if thought fit, to enact, all the 37 Ordinances including the NRO, as Acts of Parliament. For this purpose the life of the Ordinances stood extended for another 120 days (in case of Federal Legislation) and 90 days (in case of Provincial Legislation). This

constituted an opportunity to the democratic Government at the Centre and in the Provinces to legitimize the acts, actions, proceedings and orders, initiated, taken or done, under those Ordinances, by placing them before the Parliament, to make them enactments of Parliament, with retrospective effect.

5. In pursuance of above judgment of 31st July, 2009, the NRO was placed before the Standing Committee of the National Assembly on Law & Justice, in its meeting held on 29th & 30th October, 2009. During the discussions and deliberations, some of the members did not agree with the decision of the Committee and left the proceedings in protest. However, ultimately, on 2nd November, 2009 the Committee recommended that, after the proposed amendments in the Bill for enacting the NRO, the same may be passed by the Assembly. It is pertinent to mention here that despite finalization of the report of the Standing Committee on NRO and before its approval by the Chairperson of the Committee, the Minister concerned withdrew the Bill under Rule 139 of Procedure & Conduct of Business in the National Assembly, 2007. As a result, the NRO could not be passed by the Parliament, within its extended life, therefore, it lapsed.

6. The petitioners in these Constitution Petitions have challenged the vires of the NRO with the prayer that the same may be declared *ultra vires* the Constitution, void *ab initio* and of no legal effect. For convenience, the prayer made in Constitution Petition No. 76 of 2007, filed by Dr. Mubashir Hassan, is reproduced herein below: -

- “1) Section 2, 4, 5, 6 & 7 of the NRO may kindly be declared to be void *ab initio*, of no legal effect and ultra vires the Constitution, in particular Articles 25, 62, 63 and 175 thereof.

- 2) During the pendency of the instant petition, the respondents may kindly be restraint from taking any action under or in terms of the impugned Ordinance. The respondents may in particular, be restrained from withdrawing any request for mutual assistance and civil party, letters rogatory and like issued to any Foreign Government, Court or other Authority or Multilateral Organization.
- 3) Any other order deemed beneficial to the interest of Justice and equity, may also kindly be made.

7. The instant petitions came up for hearing before this Bench on 7th December 2009, when Mr. Shah Khawar, Acting Attorney General for Pakistan, placed on record a written statement on behalf of Federation of Pakistan. Relevant paras therefrom are reproduced herein below: -

- “2. That the Federation believes in supremacy of the Constitution of 1973 and the Parliament.
3. That the National Reconciliation Ordinance, 2007 was promulgated by the previous regime and I am under instruction not to defend it.”

8. Mr. Kamal Azfar, learned Sr. ASC appearing on behalf of the Federation of Pakistan, through Ministry of Law & Justice, filed Civil Misc. Applications No. 4875 & 4898 of 2009 in Constitution Petitions No. 76 & 77 of 2007. Contents of paras at page 11 & 12 of the said applications are reproduced herein below: -

“If however, this Hon’ble Court wishes to rule upon wider issues other than those raised in the petition and prayer the Federation requests that fresh petitions be filed precisely stipulating these issues whereupon the Federation will seek instructions on such new petition.

Pak Today is poised at the cross roads. One road leads to truly federal democratic welfare sate with the balance of power between an Independent judiciary, a duly elected Govt. representing the will of the people a determined executive which is fighting the war against terrorism and poverty. The second road leads to destabilization of the rule of law. The people of Pakistan await your verdict.”

When we confronted the learned counsel with above contents of his applications, he requested that the same may be treated as deleted. In this behalf, he, however, filed a written statement, contents whereof are reproduced herein below for ready reference:-

‘STATEMENT

In Compliance of the orders of the Hon’ble Supreme Court of Pakistan to appraise the Hon’ble Court as to how the Federation would interpret the wording “the second road leads to the destabilization of the rule of law”, it is submitted as follows:-

- (1) There is no mention of the wording ‘threat to democracy’ in the Statement.
- (2) The Federation supports the Prosecution, in accordance with law, of persons alleged to have done wrong doing. The Federation does not oppose the Petitions seeking a declaration that the National Reconciliation Ordinance 2007 (NRO) is illegal and unconstitutional.
- (3) With regard to the “wider issues” mentioned in paragraph No.9 these refer to those matters which were raised by the Petitioner’s counsel during oral arguments and which find no mention whatsoever in the Petitions. For example, submissions made in respect of Articles 89 (in particular the alleged concept of “implied Resolution”) and A.264 on the effect of Repeal.
- (4) The Federation’s view is that those who have benefited under the NRO should be proceeded against under the appropriate laws before the courts having the competent jurisdiction. As factual matters need to be determined by the trial courts.
- (5) So far as my comments made yesterday before this Hon’ble Court concerning the threat from GHQ, the CIA and the contents of paragraph 9 of the CMA are concerned these were my personal views and were not made on the instructions of the Federation of Pakistan. As such I withdraw the same, which should not be considered by this Hon’ble Court in any manner whatsoever and the same should be deleted and expunged from the record.
- (6) It is emphasized that the Federation of Pakistan holds this Hon’ble Court in the highest esteem and has the greatest respect for the same.”

9. Learned Advocates General of Punjab, Sindh, NWFP and Balochistan appeared and supported the stance taken by the Attorney General for Pakistan.

10. We have heard the learned counsel for the parties at length and have also gone through the material placed on record in support of their submissions.

11. As it has been noted above that challenge to NRO was thrown by the petitioners, no sooner same was promulgated by the President and admission order dated 12th October, 2007, was passed, to examine following questions:-

“2. Mr. Salman Akram Raja, learned counsel appearing on behalf of petitioner in Constitution Petition No. 76 of 2007 argued that:-

- a) Section 7 of the impugned Ordinance being self-executory in nature amounts to legislative judgment, which is impermissible intrusion into the exercise of judicial powers of the State and thus falls foul of Article 175 of the Constitution which envisages separation and independence of the judiciary from other organs of the State.
- b) Legislative judgment cannot be enacted by the Parliament. [**Smt. Indira Nehru Gandhi v. Raj Narain** (AIR 1975 SC 2299)].
- c) By promulgating Section 7 of the impugned Ordinance, Article 63(1)(h) and 63(1)(l) of the Constitution have been made ineffective, as regards chosen category of people, therefore, it is ultra vires the Constitution as it amounts to defeat the constitutional mandates.
- d) Impugned Ordinance exhorts about or indemnifies a particular class of people i.e. public office holders from proceedings, actions and orders passed by the competent authorities, whereas no such powers are available to the Parliament or, for that matter, to the President of Pakistan under Federal or Concurrent Legislative List. Further; the President is empowered only to pardon an accused person, under Article 45 of the Constitution, after passing of sentence by a Court of law, whereas by means of impugned Ordinance, the President has been empowered to indemnify or pardon an accused, against whom proceedings are pending before Investigating Agency or a Court of law or in appeal by giving a blanket cover.
- e) The impugned Ordinance violates the provisions of Article 25 of the Constitution because it is not based on intelligible differentia, relatable to lawful objects, therefore, deserves to be struck down.
- f) The impugned Ordinance is against the public policy

because it also provides protection against future action in terms of its Section 7 and it had also rendered Articles 62 and 63 of the Constitution ineffective.

- g) Sub-sections (2) and (3) of Section 494 of Cr.P.C. added by means of impugned Ordinance are contrary to provisions of Sub-section (1) of Section 494 of Cr.P.C. where it has been provided that cases can only be withdrawn with the consent of the Court, whereas, in newly added Sub-Sections, powers of the “**Court**” have been conferred upon the Review Boards of the Executive Bodies, therefore, these Sub-sections are also contrary to Article 175 of the Constitution.

and

No criteria has been laid down as to why the cases falling between the 1st day of January 1986 to 12th day of October 1999 have been covered under these provisions, inasmuch as definition of political victimization has not been provided in these Sub-sections, as a result whereof it has been left at the subjective consideration of Review Board/ Executive Bodies to determine the same. Thus such provisions cannot exist in any manner.

- h) The impugned Ordinance has been promulgated in colorable exercise of Legislative powers and its various provisions have created discrimination among ordinary and classified accused, therefore, all these provisions tantamount to malice in law.
- i) The provisions of impugned Ordinance are so overbroad that these have provided blanket cover to all the holders of public offices, including chosen representatives and ordinary employees, therefore, the object of national reconciliation cannot be achieved by allowing it to exist.
- j) The provisions of Sections 4 and 5 of the impugned Ordinance are highly discriminatory in nature, therefore, are liable to be struck down.
- k) Section 6 of the impugned Ordinance is contrary to the basic principles relating to annulment of judgments, even if passed in absentia, in accordance with existing law, according to which unless the basis for the judgment, in favour of a party, is not removed, it could not affect the rights of the parties, in whose favour the same was passed but when the Legislature promulgated the impugned Ordinance, in order to remove the basis on which the judgment was founded, such judgment shall have no bearing on the cases. **[Facto Belarus Tractor Ltd. v. Government of Pakistan (PLD 2005 SC 605)]**. Hence, provisions of the impugned Ordinance as a whole are against the concept of equality of Islamic Injunction, provided under Article 2A of the Constitution, therefore, on this score as well, deserves to be struck down being ultra

vires the Constitution.

3. Mr. Muhammad Ikram Chaudhry, learned Sr. ASC for petitioner in Constitution Petition No. 77 of 2007, while adopting the above arguments, added that :-

- i) The impugned Ordinance is purpose specific and period specific, therefore, violates Article 25 of the Constitution.

4. Dr. Farooq Hassan, Sr. ASC appearing in Constitution Petition No. 78 of 2007 on behalf of petitioner, while adopted the arguments raised by Mr. Suleman Ahmed Raja, ASC contended that:-

- i) The impugned Ordinance is contradictory to and violative of the United Nation's Convention Against Corruption, enacted in 2005 and ratified by Pakistan on 31st of August 2007.
- ii) Under the Constitution, no indemnity or amnesty can at all be given to any one, except granting pardon in terms of Article 45 of the Constitution.
- iii) Sections 2, 4, 5 and 6 of the impugned Ordinance are violative of the doctrine of trichotomy of powers.
- iv) The impugned Ordinance has in fact changed the basic structure of the Constitution.
- v) The impugned Ordinance has also violated the principles of political justice and fundamental rights because it allows plundering of national wealth and to get away with it. More so, it tried to condone dishonesty of magnitude which is unconscientious and shocking to the conscience of mankind.

5. Mr. M.A. Zaidi, AOR appeared on behalf of Mr. Muhammad Akram Sheikh, Sr. ASC in Constitution Petition No.79 of 2007 and adopted the above arguments of the learned counsel for the petitioners.

6. Mr. Tariq Asad, ASC appearing in Constitution Petition No. 80 of 2007 also adopted the above arguments, while adding that:-

- a) The impugned Ordinance has been promulgated on the basis of personal satisfaction of the President of Pakistan but for extraneous reasons and to provide indemnity/immunity to the public office holders, therefore, is liable to be struck down.

12. Subsequent thereto cases remained pending except when their hearing was fixed on 27th February, 2008 and order dated 12th October, 2007, was vacated in following terms :-

“3. These Constitution Petitions are adjourned to a date in office due to indisposition of the learned counsel for the petitioners. Meanwhile, in view of the rule laid down in the case of Federation of Pakistan vs. Aitzaz Ahsan (PLD 1989 SC 61), the observations made by this Court in Para 8 of the order dated 12.10.2007 in Constitution Petitions No.76-80 of 2007 to the effect that *“however, we are inclined to observe in unambiguous terms that any benefit drawn or intended to be drawn by any of the public office holder shall be subject to the decision of the listed petitions and the beneficiary would not be entitled to claim any protection of the concluded action under Sections 6 and 7 of the impugned Ordinance, under any principle of law, if this Court conclude that the impugned Ordinance and particularly its these provisions are ultra vires the Constitution”* are deleted. Resultantly, the Ordinance shall hold the field and shall have its normal operation. The Courts and authorities concerned shall proceed further expeditiously in the light of the provisions of the Ordinance without being influenced by the pendency of these petitions.”

13. As it has been noted above that while deciding the case of **Sindh High Court Bar Association** (ibid), all the Ordinances which were not laid before the Parliament, on account of insertion of Article 270AAA in the Constitution, were shorn of permanency, therefore, the Parliament was asked to examine all such Ordinances within a period of 120 and 90 days, as the case may be, commencing from 31st July, 2009, when a 14 Member Bench announced judgment. The period so assigned by the Court expired on 28th November, 2009 but the NRO was taken back from the Parliament, leaving for this Court to examine its constitutionality in the cases listed above. It is a cardinal principle of jurisprudence that courts are not required to give decisions of cases in vacuum rather it has to consider facts as well,

giving a cause to a person to approach Courts. The NRO gave benefits to a class of people, whose identification is not difficult to ascertain, namely accused persons, involved in criminal and corruption cases, during the period commencing from 1st January, 1986 to 12th October, 1999 and this classification has created a divide amongst ordinary citizens of Pakistan and a class of alleged criminals who statedly have committed crimes of murder, dacoity, rape, looting/plundering of money/resources of this nation. Therefore, prima facie, to understand the nature of such beneficiaries, Federal Government, Provincial Governments and the NAB were asked to provide details in this behalf. In response to such query the Government of Sindh through its Advocate General filed a large list of such like accused, who being charged for the cases of criminal nature, benefited from the NRO, which included heinous and minor crimes, as well. As far as the remaining Governments and the Federating Units are concerned, they categorically denied extension of benefits of the NRO to even a single accused in their respective jurisdictions. However, NAB has submitted a list containing names of 248 persons, who benefited from the NRO within and outside the country. A cursory perusal of this list suggests that barring the cases inside the country, huge benefit has been availed by some of the persons in the cases pending against them outside the country. At this stage it is to be noted that application of the NRO, beyond the territories of the country, is a question which requires consideration on jurisdictional plane of this Court as well. NAB has also provided a list of the persons, who were convicted in absentia under Section 31A of the NAB Ordinance.

14. In depth examination of the NRO suggests that it has not been promulgated to provide reconciliation on national basis as this nation has seen reconciliation in 1973, when a Constituent Assembly gave the

Constitution of 1973 to the nation, guaranteeing their fundamental rights, on the basis of equality and brotherhood, as a result whereof, the nation had proved its unity, whenever it faced a challenge to its sovereignty and existence. The representation of the people, in subsequent Legislative Assemblies, has upheld the provisions of 1973 Constitution, except for few occasions when they have made amendments under peculiar circumstances. However, salient features of the Constitution i.e. Independence of Judiciary, Federalism, Parliamentary form of Government blended with Islamic provisions, now have become integral part of the Constitution and no change in the basic features of the Constitution, is possible through amendment as it would be against the national reconciliation, evident in the promulgation of the Constitution of 1973, by a Legislative Assembly. Therefore, promulgation of the NRO seems to be against the national interest and its preamble is contrary to the substance embodied therein. Thus, it violates various provisions of the Constitution. Therefore, by means of instant short order, reasons of which shall be recorded later, we hold as follows:-

- (i) that the NRO is declared to be an instrument void *ab initio* being *ultra vires* and violative of various constitutional provisions including Article Nos. 4, 8, 25, 62(f), 63(i)(p), 89, 175 and 227 of the Constitution;
- (ii) that as a consequence of the said declaration, all steps taken, actions suffered, and all orders passed by whatever authority, any orders passed by the courts of law including the orders of discharge and acquittals recorded in favour of the accused persons, are also declared never to have existed in the eyes of law and resultantly of no legal effect;

- (iii) that all cases in which the accused persons were either discharged or acquitted under Section 2 of the NRO or where proceedings pending against the holders of public office had got terminated in view of Section 7 thereof, a list of which cases has been furnished to this Court and any other such cases/proceedings which may not have been brought to the notice of this Court, shall stand revived and relegated to the status of pre-5th of October, 2007 position;
- (iv) that all the concerned courts including the trial, the appellate and the revisional courts are ordered to summon the persons accused in such cases and then to proceed in the respective matters in accordance with law from the stage from where such proceedings had been brought to an end in pursuance of the above provisions of the NRO;
- (v) that the Federal Government, all the Provincial Governments and all relevant and competent authorities including the Prosecutor General of NAB, the Special Prosecutors in various Accountability Courts, the Prosecutors General in the four Provinces and other officers or officials involved in the prosecution of criminal offenders are directed to offer every possible assistance required by the competent courts in the said connection;
- (vi) that similarly all cases which were under investigation or pending enquiries and which had either been withdrawn or where the investigations or enquiries had been terminated on account of the NRO shall also stand revived and the relevant and competent authorities shall proceed in the said matters in accordance with law;
- (vii) that it may be clarified that any judgment, conviction or sentence recorded under section 31-A of the NAB Ordinance shall hold the field subject to law and since the NRO stands declared as void *ab initio*, therefore, any benefit derived by any person in pursuance of Section 6 thereof is also declared never to have legally accrued to any such person and consequently of no legal effect;

- (viii) that since in view of the provisions of Article 100(3) of the Constitution, the Attorney General for Pakistan could not have suffered any act not assigned to him by the Federal Government or not authorized by the said Government and since no order or authority had been shown to us under which the then learned Attorney General namely Malik Muhammad Qayyum had been authorized to address communications to various authorities/courts in foreign countries including Switzerland, therefore, such communications addressed by him withdrawing the requests for Mutual Legal Assistance or abandoning the status of a Civil Party in such proceedings abroad or which had culminated in the termination of proceedings before the competent fora in Switzerland or other countries or in abandonment of the claim of the Government of Pakistan to huge amounts of allegedly laundered moneys, are declared to be unauthorized, unconstitutional and illegal acts of the said Malik Muhammad Qayyum;
- (ix) that since the NRO stands declared void *ab initio*, therefore, any actions taken or suffered under the said law are also *non est* in law and since the communications addressed by Malik Muhammad Qayyum to various foreign fora/authorities/courts withdrawing the requests earlier made by the Government of Pakistan for Mutual Legal Assistance; surrendering the status of Civil Party; abandoning the claims to the allegedly laundered moneys lying in foreign countries including Switzerland, have also been declared by us to be unauthorized and illegal communications and consequently of no legal effect, therefore, it is declared that the initial requests for Mutual Legal Assistance; securing the status of Civil Party and the claims lodged to the allegedly laundered moneys lying in foreign countries including Switzerland are declared never to have been withdrawn. Therefore the Federal Government and other concerned authorities are ordered to take immediate steps to seek revival of the said requests, claims and status;

- (x) that in view of the above noticed conduct of Malik Muhammad Qayyum, the then learned Attorney General for Pakistan in addressing unauthorized communications which had resulted in unlawful abandonment of claims of the Government of Pakistan, inter alia, to huge amounts of the allegedly laundered moneys lying in foreign countries including Switzerland, the Federal Government and all other competent authorities are directed to proceed against the said Malik Muhammad Qayyum in accordance with law in the said connection;
- (xi) that we place on record our displeasure about the conduct and lack of proper and honest assistance and cooperation on the part of the Chairman of the NAB, the Prosecutor General of the NAB and of the Additional Prosecutor General of the NAB, namely, Mr. Abdul Baseer Qureshi in this case. Consequently, it is not possible for us to trust them with proper and diligent pursuit of the cases falling within their respective spheres of operation. It is therefore, suggested that the Federal Government may make fresh appointments against the said posts of persons possessing high degree of competence and impeccable integrity in terms of Section 6 of the NAB Ordinance as also in terms of the observations of this Court made in the case of Khan Asfandiyar Wali v Federation of Pakistan (PLD 2001 SC 607). However, till such fresh appointments are so made, the present incumbents may continue to discharge their obligations strictly in accordance with law. They shall, however, transmit periodical reports of the actions taken by them to the Monitoring Cell of this Court which is being established through the succeeding parts of this judgment;
- (xii) that a Monitoring Cell shall be established in the Supreme Court of Pakistan comprising of the Chief Justice of Pakistan or a Judge of the Supreme Court to be nominated by him to monitor the progress and the proceedings in the above noticed and other cases under the NAB Ordinance. Likewise similar Monitoring Cells shall be set up in the High Courts of all the Provinces comprising of the Chief Justice of the

respective Province or Judges of the concerned High Courts to be nominated by them to monitor the progress and the proceedings in cases in which the accused persons had been acquitted or discharged under Section 2 of the NRO;

- (xiii) that the Secretary of the Law Division, Government of Pakistan, is directed to take immediate steps to increase the number of Accountability Courts to ensure expeditious disposal of cases;

15. We place on record our deep sense of appreciation for the learned counsel for the parties as also for the learned *amicii curiae* who have rendered invaluable assistance to us in these matters.

The petitions stand allowed and disposed of by this short order in terms noted above.

Islamabad
16.12.2009
Irshad /*

APPROVED FOR REPORTING.