

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Qazi Faez Isa, CJ
Justice Muhammad Ali Mazhar
Justice Musarrat Hilali

Civil Petitions No.1503, 1504 & 1505 of 2022
and Civil Petition No.4333 of 2021
C.M.Appeal.124/2022 IN Const. P. NIL/2022
C.M.Appeal.161/2023 IN Const. P. NIL/2023
Const. P. 50/2023

[Against the orders dated 28.04.2022 and 10.04.2022 passed by the Islamabad High Court, Islamabad in Writ Petitions No.794, 803 and 885 of 2022, respectively]

<i>Government of Pakistan through Secretary, Ministry of Interior, Islamabad</i>	<i>(in C.Ps.1503, 1504 & 1505/2022)</i> <i>...Petitioner(s)</i>
<i>Federation of Pakistan through Secretary Ministry of Interior, Islamabad Khushdil Khan Malik</i>	<i>(in C.P.4333/2021)</i> <i>...Petitioner(s)</i> <i>(in C.M.Appeal.124/2022)</i> <i>...Appellant(s)</i>
<i>Aitzaz Ahsan</i>	<i>(in C.M.Appeal.161/2023)</i> <i>...Appellant(s)</i>
<i>Amina Masood Janjua, Chairman Defence of Human Rights, Rawalpindi</i>	<i>(in Const.P.50/2023)</i> <i>...Petitioner(s)</i>

Versus

<i>Imaan Zainab Hazir and others</i>	<i>(in C.Ps.1503 & 1504/2022)</i>
<i>Haji Mohammad Hassan and others</i>	<i>(in C.P.1505/2022)</i>
<i>Federation of Pakistan through the Secretary, Ministry of Law & Justice, Islamabad and others</i>	<i>(in C.M.Appeal.124/2022)</i>
<i>Federation of Pakistan, through Secretary, Ministry of Interior, Islamabad and others</i>	<i>(in C.M.Appeal.161/2023)</i>
<i>Nasreen Begum and others</i>	<i>(in C.P.4333/2021)</i>
<i>Federation of Pakistan through Secretary, Ministry of Interior, Islamabad</i>	<i>(in Const.P.50/2023)</i> <i>...Respondent(s)</i>

For the Petitioner(s) <i>(in C.Ps.1503, 1504 & 1505/2022 & C.P.4333/2021)</i> <i>(in Const.P.50/2023)</i>	: Mr. Mansoor Usman Awan, AGP Malik Javed Iqbal Weins, Addl.AGP : In person
For the Appellant(s) <i>(in C.M.Appeal.124/2022)</i> <i>(in C.M.Appeal.161/2023)</i>	: In person : Mr. Muhammad Latif Khan Khosa, Sr.ASC Ch. Aitzaz Ahsan, Sr.ASC Mr. Shoaib Shaheen, ASC
For Respondent No.1 <i>(in C.Ps.1503 & 1504/2022)</i>	: Mr. Salahuddin Ahmed, ASC (via video link from Karachi)
For Commission of Inquiry on enforced Disappearances	: Mr. Khalid Naseem, Registrar.

On Courts Call : Mr. Faisal Siddiqi, ASC

Date of Hearing : 03.01.2024

ORDER

Qazi Faez Isa, CJ.

Civil Petition No.4333 of 2021 and Civil Petitions No.1503, 1504 & 1505 of 2022: Through these petitions orders dated 28 April 2022 and 30 June 2021 passed by the Islamabad High Court are assailed. Learned Attorney-General for Pakistan (**'AGP'**) states that he is under instructions to withdraw these petitions. He further states that the orders impugned herein have been implemented and that he will be filing a concise statement in this regard. Accordingly these petitions are dismissed as withdrawn, however, learned AGP to file concise statement as stated.

2. **Constitution Petition No.50 of 2023:** Mrs. Amina Masood Janjua states that her husband Mr. Masood Janjua was travelling from Rawalpindi to Peshawar on 30 July 2005 and has not been found since. She states that she approached the Commission of Enquiry on Enforced Disappearances (**'the Commission'**), which was notified by the Federal Government, comprising of the following:

Justice Javed Iqbal, former Judge SCP, Chairman
Justice Amanullah Yaseenzai, former Judge HCB, Member
Justice Zia Pervaiz, former Judge HCS, Member
Muhammad Sharif Virk, Member

She states that she is not satisfied with the working of the Commission. The other petitioners too have expressed reservations about the effectiveness of the Commission.

3. Mr. Khalid Naseem, the Registrar of the Commission, states that the Commission has done considerable work and due to its efforts a number of persons have been recovered/returned home. On our query he states that the Commission does not work voluntarily but has a budget and its Chairman, Members and employees are paid by the Government.

4. Mr. Faisal Siddiqi, Advocate Supreme Court, present in Court has stepped-up to render assistance. He has pointed out that the production orders issued by the Commission have not

been honoured. Since this matter pertains to Fundamental Rights and assistance is required by this Court, we appoint Mr. Faisal Siddiqi, ASC, as *amicus curiae*. The Federal Government shall refund his costs of travel and lodging.

5. **C.M.Appeal.124/2022:** The Registrar has raised objections on the maintainability of the constitution petition filed by Mr. Khushdil Khan Malik, who has also raised his personal grievances therein. Office objections are overruled and his petition be numbered, however, we restrict his petition to the extent of missing persons and if he has any other grievances the same may be raised at the appropriate forum.

6. **C.M.Appeal.161/2023:** The Registrar has raised objections on the maintainability of constitution petition filed by Mr. Aitzaz Ahsan, a Senior Advocate. The petition also attends to matter of missing persons, but also refers to a few politically aligned persons who are stated to have been picked up and have since returned home. Those persons who have returned cannot be categorized as missing persons, in respect of whom writs of habeas corpus can be issued. Moreover, the petitioner has not been authorized to represent them. Therefore, while we overrule the office objections we restrict the scope of this petition to missing persons. Office is directed to number the petition.

7. During the course of hearing reference was made to the Bill submitted in the National Assembly with regards to the subject of missing persons and that when it reached the Senate it vanished. Therefore, we enquired who was the custodian of the Senate and were told that it was the Chairman Senate, Mr. Sadiq Sanjrani, who was elected by those who were then in government. It is alleged that a Federal Minister's efforts were thwarted by the Chairman Senate, who was elected by the votes of the same party. This is a very serious allegation levelled against Mr. Sadiq Sanjrani and which pertains to missing persons. However, we note that the Chairman Senate, Mr. Sadiq Sanjrani, has not been arrayed as a party, therefore, unless the petitioner arrays him as a party it would not be appropriate to attend to allegations made against him.

8. To proceed further in a meaningful manner and with a view to resolve this matter it would be appropriate to ascertain facts from the Commission. Therefore, the Commission is directed to collate and submit: (a) the names with parentage and addresses of those who went missing, (b) name and relationship of the person who reported the missing person, (c) the date they went missing, (d) those who were in government in the Federation and the concerned province at that time, (e) whether the missing person was recovered or not, and (f) if not recovered the efforts, if any, taken to find out the whereabouts of the missing person. In addition, (g) all those in respect of whom production orders were issued but were not produced, and (h) what was the follow-up by the Commission when its production orders were not complied with.

9. The above information be provided electronically and through hard copy to the office of the learned Attorney-General within ten days, who upon receipt thereof will submit response, including why production orders issued by the Commission were not complied with, within twenty days after the Commission supplies the said information. The learned Attorney-General to submit report (hard copy and electronically) to this Court.

10. It will be appropriate if the budget, staff and resources of the Commission are disclosed, as the people's Fundamental Right, under Article 19A of the Constitution, grants them the right to information.

11. The Federal Government is directed to submit undertaking in writing, signed by senior most officers of the concerned ministries, that henceforth no one shall be picked up other than in accordance with the law.

12. During the hearing it was brought to our attention that during the Court's winter vacations the families of protesting missing persons at Islamabad were manhandled by police/law enforcement personnel. This Court takes great exception to such high handedness because the right to peaceful protest is amongst the guaranteed Fundamental Rights which must be honoured in letter and spirit. This Court has already held that:

‘Every citizen and political party has the right to assemble and protest provided such assembly and protest is peaceful and complies with the law imposing reasonable restrictions in the interest of public order. The right to assemble and protest is circumscribed only to the extent that it infringes on the fundamental rights of others, including their right to free movement and to hold and enjoy property.’¹

13. To be fixed in Court for further proceedings after expiry of the documentation period.

Chief Justice

Judge

Judge

ISLAMABAD

3 January 2023

Syed Farhan Ali, Hassan K.W.

¹ *Suo Moto Case No. 7/2017 PLD 2019 Supreme Court 318, para 53(2).*