

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

Mr. Justice Khalil-ur-Rehman Ramday
Mr. Justice Muhammad Nawaz Abbasi
Mr. Justice Faqir Muhammad Khokhar
Mr. Justice Mian Shakirullah Jan
Mr. Justice M. Javed Buttar
Mr. Justice Tassaduq Hussain Jillani
Mr. Justice Saiyed Saeed Ashhad
Mr. Justice Nasir-ul-Mulk
Mr. Justice Raja Fayyaz Ahmed
Mr. Justice Ch. Ijaz Ahmed
Mr. Justice Syed Jamshed Ali
Mr. Justice Hamid Ali Mirza
Mr. Justice Ghulam Rabbani

CONSTITUTION PETITION NO.21 OF 2007

Chief Justice of Pakistan,

Mr. Justice Iftikhar Muhammad Chaudhry.

...Petitioner.

Versus

The President of Pakistan through
the Secretary and others.

...Respondents.

...

For the petitioner:

Ch. Aitzaz Ahsan, Sr. ASC
Mr. Hamid Khan, Sr. ASC,
Mr. M. S. Khattak, AOR.
Assisted by Barrister Gohar Ali Khan,
Mr. Nadeem Ahmed and
Mr. Shahid Saeed, Advocates
(under special permission granted by this Court)

On Court's notice:

Mr. Makhdoom Ali Khan,
Attorney General for Pakistan
Raja Abdul Ghafoor, AOR
Assisted by Mr. Khurram Hashmi and
Umair Majeed Malik, Advocates
(under special permission granted by this Court)

For respondent No.1:

Syed Sharifuddin Pirzada, Sr. ASC
Raja Muhammad Ibrahim Satti, ASC
Assisted by Mr. Waqar Rana, Advocate
(under special permission granted by this Court)

For respondent No.2:

Mr. Maqbool Ellahi Malik, Sr. ASC
Malik Muhammad Qayyum, ASC
Mr. Shaukat Ali Mehr, ASC
Ch. Akhtar Ali, AOR.
Assisted by Muhammad Ahmed Qayyum, Advocate
(under special permission granted by this Court)

For respondent No.3:

Syed Zafar Abbas Naqvi, AOR.

For respondents No.4 & 5:

Nemo.

For respondent No.6:

Mr. Aftab Iqbal Chaudhry, A.G. Punjab
Ch. Muhammad Hussain, Addl. A. G. and

Rao Muhammad Yousaf Khan, AOR.

CONSTITUTION PETITION NO.7 OF 2007

Muhammad Shoaib Shaheen. ...Petitioner.

Versus

Federation of Pakistan through
Secretary Law and others. ...Respondents.

...

For the petitioner: In person.

For respondent No.1: Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.8 OF 2007

Watan Party through its President. ...Petitioner.

Versus

President of Pakistan through Cabinet
Secretariat and others. ...Respondents.

...

For the petitioner: Barrister Zafar Ullah Khan, AS with
Mr. G. N. Gohar, AOR.

On Court's notice: Mr. Makhdoom Ali Khan,
Attorney General for Pakistan with
Raja Abdul Ghafoor, AOR.

For the respondents: Sahibzada Ahmed Raza Kasuri, Sr. ASC
Malik Muhammad Qayyum, ASC
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.10 OF 2007

Adliya Bachao Committee through
Convenor, and others. ...Petitioners.

Versus

Federation of Pakistan and others. ...Respondents.

...

For the petitioners: Dr. Farooq Hassan, ASC
Mr. Abdur Rasheed Qureshi, ASC and
Malik Shakeel-ur-Rehman, ASC.

On Court's notice: Mr. Makhdoom Ali Khan,
Attorney General for Pakistan with
Raja Abdul Ghafoor, AOR.

For respondent No.1: Malik Muhammad Qayyum, ASC with
Mr. Shaukat Ali Mehr, ASC,
Mr. Abdul Sattar Chughtai, ASC,
Mr. Abdul Hameed Rana, ASC and
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.11 OF 2007

Muhammad Ashraf Khan. ...Petitioner.

Versus

Pervaiz Mushraf and others. ...Respondents.

For the petitioner: In person.

For the respondents: Not represented.

CONSTITUTION PETITION NO.12 OF 2007

M. A. Ghani Chaudhry. ...Petitioner.

Versus

Federation of Pakistan through
President of Pakistan. ...Respondents.

...

For the petitioner: In person.

For the respondents: Not represented.

CONSTITUTION PETITION NO.15 OF 2007

Amjad Malik. ...Petitioner.

Versus

President of Pakistan through
Secretary Law and another. ...Respondents.

...

For the petitioner: Mr. Muhammad Akram Sheikh, Sr. ASC
Mr. Abdul Rehman Siddiqui, ASC,
Mr. Arshad Ali Chaudhry, AOR.
Assisted by Mr. Mohsin Kamal and
Mr. Azid Nafees, Advocates.
(under special permission granted by this Court)

For respondent No.1: Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.16 OF 2007

Communist Party of Pakistan through
its Chairman. ...Petitioner.

Versus

Federation of Pakistan through
Secretary Cabinet and another. ...Respondents.

...

For the petitioner: Engineer Jamil Ahmed Malik (In person).

For respondent No.1: Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.18 OF 2007

Muhammad Ahsan Bhoon. ...Petitioner.

Versus

Federation of Pakistan through
Secretary Law.

...Respondents.

For the petitioner:

Mr. Muhammad Akram Sheikh, Sr. ASC with
Mr. Arshad Ali Chaudhry, AOR
Assisted by Barrister Natalya Kamal and
Mr. Ahmed Ahsan, Advocates
(under special permission granted by this Court)

For respondent No.1:

Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.19 OF 2007

Muhammad Rafi Siddiqui.

...Petitioner.

Versus

Federation of Pakistan through
Secretary Cabinet and another.

...Respondents.

...

For the petitioner:

Dr. Farooq Hassan, Sr. ASC with
Malik Shakeel-ur-Rehman, ASC and
Ch. Arshad Ali, AOR.

For the respondents:

Not represented.

CONSTITUTION PETITION NO.22 OF 2007

Barrister Zafarullah Khan.

...Petitioner.

Versus

President of Pakistan through Secretary
Law Justice and Human Rights
Division and others.

...Respondents.

...

For the petitioner:

In person.

For respondent No.1:

Malik Muhammad Qayyum, ASC with
Mr. Pervaiz Alamgir, ASC,
Mian Ehsan-ul-Haq Sajid, ASC and
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.23 OF 2007

Pakistan Bar Council through its
Vice Chairman.

...Petitioner.

Versus

President through its Secretary
and others.

...Respondents.

...

For the petitioner:

Mr. Hamid Khan, Sr. ASC with
Mirza Aziz Akbar Baig, ASC and

Mr. M. S. Khattak, AOR.

For respondent No.2: Malik Muhammad Qayyum, ASC with
Mr. M. Siddique Mirza, ASC,
Mr. Khalid Mahmood Farooqi, ASC,
Mr. Shabbir Lali, ASC and
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.24 OF 2007

Supreme Court Bar Association through
its President and another. ...Petitioners.

Versus

President of Pakistan through its
Secretary and others. ...Respondents.

...

For the petitioner: Mr. Hamid Khan, Sr. ASC with
Mr. Rasheed A. Rizvi, ASC,
Mr. Shafqat Abbasi, ASC,
Hafiz Abdul Rehman Ansari, ASC and
Mr. M. S. Khattak, AOR.

For respondent No.2: Mr. Ahmed Raza Kasuri, Sr. ASC
Malik Muhammad Qayyum, ASC
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.25 OF 2007

Abdul Majeed Pirzada. ...Petitioner.

Versus

Federation of Pakistan through Secretary
Cabinet Division and others. ...Respondents.

...

For the petitioner: Mr. Abdul Majeed Pirzada, Sr. ASC
Ms. Mehreen Anwar Raja, ASC and
Mr. M. S. Khattak, AOR.

For respondent No.2: Malik Muhammad Qayyum, ASC with
Ch. Naseer Ahmed, ASC and
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.27 OF 2007

Dr. Tariq Hassan. ...Petitioner.

Versus

Federation of Pakistan through
Secretary Law and others. ...Respondents.

...

For the petitioner: Mr. Muhammad Akram Sheikh, Sr. ASC,
Mr. Arshad Ali Chaudhry, AOR assisted by
Barrister M. Kamram Sheikh,
Mr. Rahat Kaunain, Advocate.
(under special permission granted by this Court)

For respondent No.1: Malik Muhammad Qayyum, ASC with

Ch. Akhtar Ali, AOR.

C.M.APPEAL NO.22 OF 2007

Athar Minallah and another.

...Appellant.

Versus

Registrar, Supreme Court of Pakistan.

...Respondent.

...

For the appellant:

Syed Mansoor Ali Shah, ASC with
Mr. Yahya Afridi, ASC,
Mr. Athar Minallah, ASC and
Mr. M. S. Khattak, AOR.

For the respondent:

Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

C.M.APPEAL NO.27 OF 2007

Muhammad Shoaib Shaheen.

...Appellant.

Versus

Federation of Pakistan through Secretary
Law and Justice Division and others.

...Respondents.

...

For the appellant:

In person.

For respondent No.1:

Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.30 OF 2007

Chaudhry Muhammad Ashraf.

...Petitioner.

Versus

Federation of Pakistan through Secretary
Law and others.

...Respondents.

...

For the petitioner:

Mr. Arshad Ali Chaudhry, ASC/AOR.

For respondent No.2:

Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.31 OF 2007

Abrar Hassan, President Sindh High
Court Bar Association.

...Petitioner.

Versus

President of Pakistan through
its Secretary.

...Respondents.

...

For the petitioner:

Mr. Rasheed A. Rizvi, ASC with
Mr. Abrar Hassan, ASC and
Mr. M. S. Khattak, AOR.

For respondent No.2:

Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.32 OF 2007

Lahore High Court Bar Association
through its President. ...Petitioner.

Versus

President of Pakistan through
its Secretary. ...Respondent.

...

For the petitioner: Mr. Ahmed Awais, ASC with
Mr. M. S. Khattak, AOR.

For respondent No.2: Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.33 OF 2007

Balochistan Bar Association through
its President. ...Petitioner.

Versus

President of Pakistan through
its Secretary. ...Respondent.

...

For the petitioner: Mr. Fakhar-ud-Din G. Ibrahim, Sr. ASC with
Mr. Tariq Mahmood, ASC and
Mr. M. S. Khattak, AOR.

For respondent No.2: Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.34 OF 2007

Ch. Naseer Ahmed Bhutta. ...Petitioner.

Versus

Federation of Pakistan. ...Respondent.

...

For the petitioner: Ch. Naseer Ahmed Bhutta, ASC.

For the respondent: Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.35 OF 2007

High Court Bar Association D.I. Khan
through its President and another. ...Petitioners.

Versus

President of Pakistan and others.
...Respondents.

...

For the petitioner: Mr. Arshad Ali Chaudhry, ASC/AOR.

For respondent No.2: Malik Muhammad Qayyum, ASC with
Ch. Akhtar Ali, AOR.

CONSTITUTION PETITION NO.38 OF 2007

Syed Fakhar-e-Imam. ...Petitioner.
Versus
President of Pakistan. ...Respondent.
...
For the petitioner: Syed Iftikhar Hussain Gillani, Sr. ASC with
Mr. M. S. Khattak, AOR.
For the respondent: Not represented.

CONSTITUTION PETITION NO.40 OF 2007

Al-Jehad Trust through its President. ...Petitioner.
Versus
Chief of Army Staff. ...Respondent.
...
For the petitioner: Mr. Habib-ul-Wahabul Khairi, ASC.
For the respondent: Not represented.
Dates of hearing: 15th to 17th, 21st to 25th, 28th to 31st May, 2007, 1st, 4th
to 8th, 11th to 14th, 18th to 21st, 25th to 28th June, 2007,
2nd to 5th, 9th to 12th and 16th to 20th July, 2007.

ORDER

For detailed reasons to be recorded later, the following
issues arising out of this petition are decided as under:-

(I) **MAINTAINABILITY OF COP NO.21 OF 2007 FILED UNDER
ARTICLE 184(3) OF THE CONSTITUTION**

This petition is unanimously declared to be maintainable.

(II) **VALIDITY OF THE DIRECTION (THE REFERENCE) ISSUED
BY THE PRESIDENT UNDER ARTICLE 209(5) OF THE
CONSTITUTION.**

By a majority of 10 to 3 (Faqir Muhammad Khokhar, J., M.
Javed Buttar, J. and Saiyed Saeed Ashhad, J. dissenting), the said

direction (the Reference) in question dated March 9, 2007, for separate reasons to be recorded by the Hon. Judges so desiring, is set aside.

(III) VIRES OF JUDGES (COMPULSORY LEAVE) ORDER BEING PRESIDENT'S ORDER NO. 27 OF 1970 AND THE CONSEQUENTIAL VALIDITY OF THE ORDER DATED 15.3.2007 PASSED BY THE PRESIDENT DIRECTING THAT THE CJP SHALL BE ON LEAVE

The said President's Order No.27 of 1970 is, unanimately declared as ultra vires of the Constitution and consequently the said order of the President dated 15.3.2007 is also, unanimately declared to have been passed without lawful authority.

(IV) VALIDITY OF THE ORDER OF THE PRESIDENT DATED 9.3.2007 AND OF THE ORDER OF THE SAME DATE OF THE SUPREME JUDICIAL COUNCIL RESTRAINING THE CJP FROM ACTING AS A JUDGE OF THE SUPREME COURT AND/OR CHIEF JUSTICE OF PAKISTAN

Both these orders are, unanimately, set aside as being illegal. However, since according to the minority view on the question of the validity of the direction (the Reference) in question, the said Reference had been competently filed by the President, therefore, this Court could pass a restraining order under Article 184(3) read with Article 187 of the Constitution.

(V) VALIDITY OF THE APPOINTMENT OF THE HON'BLE ACTING CHIEF JUSTICES OF PAKISTAN IN VIEW OF THE ANNULMENT OF THE TWO RESTRAINING ORDERS AND THE COMPULSORY LEAVE ORDER IN RESPECT OF THE CJP

The appointments in question of the Hon'ble Acting Chief Justices of Pakistan vide notification dated 9.3.2007 and the notification dated 22.3.2007 are, unanimately, declared to have been

made without lawful authority. However, this in-validity shall not affect the ordinary working of the Supreme Court or the discharge of any other Constitutional and/or legal obligations by the Hon'ble Acting Chief Justices of Pakistan during the period in question and this declaration is so made by applying the *de-facto* doctrine.

(VI) **ACCOUNTABILITY OF THE HON'BLE CHIEF JUSTICE OF PAKISTAN**

It has never been anybody's case before us that the Chief Justice of Pakistan was not accountable. The same issue, therefore, does not require any adjudication.

All other legal and Constitutional issues raised before us shall be answered in due course through the detailed judgment/judgments to follow.

ORDER OF THE COURT

By majority of 10 to 3 (Faqir Muhammad Khokhar, J., M. Javed Buttar, J. and Saiyed Saeed Ashhad, J. dissenting), this Constitution Original Petition No.21 of 2007 filed by Mr. Justice Iftikhar Muhammad Chaudhry, the Chief Justice of Pakistan, is allowed as a result whereof the above-mentioned direction (the Reference) of the President dated March 9, 2007 is set aside. As a further consequence thereof, the petitioner CJP shall be deemed to be holding the said office and shall always be deemed to have been so holding the same.

The other connected petitions shall be listed before the appropriate Benches, in due course, for their disposal in accordance with law.

J.

J.

J.

J.

J.

J.

J.

J.

J.

J.

J.

J.

J.

Islamabad, the
20th July, 2007.

(APPROVED FOR REPORTING)