

**IN THE SUPREME COURT OF PAKISTAN**

(Original Jurisdiction)

**PRESENT**

**Mr. Justice Iftikhar Muhammad Chaudhry, CJ**

**Mr. Justice Jawwad S. Khawaja**

**Mr. Justice Khilji Arif Hussain**

**HUMAN RIGHTS CASE NO.19 OF 1996**

[Application by Air Marshal (Retd.) Muhammad Asghar Khan]

Air Marshal (Retd.) Muhammad Asghar Khan ... PETITIONER

**VERSUS**

General (Retd.) Mirza Aslam Baig, former Chief of Army Staff & others  
... RESPONDENTS

For the petitioner:

Mr. Salman Akram Raja, ASC  
Assisted by Malik Ghulam Sabir, Adv.  
a/w Air Marshal (R) M. Asghar Khan

For the Federation/  
M/o Defence

Mr. Irfan Qadir Attorney General for Pakistan  
Mr. Dil Mohammad Khan Alizai, DAG  
Raja Abdul Ghafoor, AOR Assisted by:  
Barrister Shehryar Riaz Sheikh, Adv.  
Commander Hussain Shahbaz, Director (L)  
Wing Comd. M. Irfan, Deputy Director

For Respondent No. 1:

Mr. Muhammad Akram Sheikh, Sr. ASC  
Assisted by Ch. Hassan Murtaza Mann, Adv.  
a/w Gen. Retd. Mirza Aslam Baig

Respondent No. 2:

Lt. Gen. Retd. Asad Durrani, Ex-DG, ISI  
In Person

For Respondent No. 3:

Mr. Muhammad Munir Piracha, Sr. ASC

For the Applicant(s):

Sh. Khizar Hayat, Sr. ASC  
(CMA No. 918/2007)

Mr. Roedad Khan in person  
(CMA No. 3196/2012)

Raja Abdul Ghafoor, AOR  
(in CMA 3410/12)

**On Court's notice:**

For President Secretariat: Malik Asif Hayat, Secretary to the President  
Mr. Arshad Ali Chaudhry, Director Legal

For SBP: Raja Abdul Ghafoor, AOR

For NAB: Mr. Mazhar Ali Chaudhry, DPG

Brig. (R) Hamid Saeed, in person

For HBL: Nemo

Date of Hearing: 19.10.2012.

...

**ORDER**

**IFTIKHAR MUHAMMAD CHAUDHRY, CJ.-** The

Constitution of the Islamic Republic of Pakistan commands that it is the will of the people of Pakistan to establish an order wherein the State shall exercise its powers and authority through the chosen representatives of the people, wherein the principles of democracy, freedom, equality, etc., shall be fully observed, so that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the world, and make their full contribution towards international peace and progress and happiness of humanity. People of Pakistan had been struggling to establish a parliamentary and democratic order since long within the framework of the Constitution and now they foresee a strong system which is established by the passage of time without any threat and which is subject to the constitution and rule of law.

2. The essence of this Human Rights case is based on the fundamental right of citizens enshrined in Article 17 of the Constitution. It raises an important question of public importance to enforce the fundamental rights, *inter alia*, noted hereinabove,

therefore, in accordance with the provisions of Article 184(3) of the Constitution, jurisdiction has been assumed and exercised to declare, for the reasons to be recorded later, as under: -

- (1) That citizens of Pakistan as a matter of right are free to elect their representatives in an election process being conducted honestly, justly, fairly and in accordance with law.
- (2) The general election held in the year 1990 was subjected to corruption and corrupt practices as in view of the overwhelming material produced by the parties during hearing it has been established that an "Election Cell" had been created in the Presidency, which was functioning to provide financial assistance to the favoured candidates, or a group of political parties to achieve desired result by polluting election process and to deprive the people of Pakistan from being represented by their chosen representatives.
- (3) A President of Pakistan, in Parliamentary system of government, being head of the State represents the unity of the Republic under Article 41 of the Constitution. And as per the oath of his office in all circumstances, he will do right to all manner of people, according to law, without fear or favour, affection or ill-will. Thus, holder of office of President of Pakistan, violates the Constitution, if he fails to treat all manner of people equally and without favouring any set, according to law, and as such, creates/provides an occasion which may lead to an action against him under the Constitution and the Law.
- (4) The President of Pakistan, Chief of Army Staff, DG ISI or their subordinates certainly are not supposed to create an Election Cell or to support a political party/

group of political parties, because if they do so, the citizens would fail to elect their representatives in an honest, fair and free process of election, and their actions would negate the constitutional mandate on the subject.

- (5) However, in the instant case it has been established that in the general elections of 1990 an Election Cell was established in the Presidency to influence the elections and was aided by General (R) Mirza Aslam Baig who was the Chief of Army Staff and by General (R) Asad Durrani, the then Director General ISI and they participated in the unlawful activities of the Election Cell in violation of the responsibilities of the Army and ISI as institutions which is an act of individuals but not of institutions represented by them respectively, noted hereinabove.
- (6) ISI or MI may perform their duties as per the laws to safeguard the borders of Pakistan or to provide civil aid to the Federal Government, but such organizations have no role to play in the political activities/politics, for formulation or destabilization of political Governments, nor can they facilitate or show favour to a political party or group of political parties or politicians individually, in any manner, which may lead in his or their success.
- (7) It has also been established that late Ghulam Ishaq Khan, the then President of Pakistan with the support of General (R) Aslam Baig, General (R) Asad Durrani and others, who were serving in M.I and now either have passed away or have retired, were supporting the functioning of the 'Election Cell', established illegally.
- (8) Mr. M. Younas A. Habib, the then Chief Executive of Habib Bank Ltd. at the direction and behest of above noted functionaries, arranged/provided Rs.140 million belonging to public exchequer, out of which an amount

of Rs.60 million was distributed to politicians, whose incomplete details have been furnished by General (R) Asad Durrani, however, without a thorough probe no adverse order can be passed against them in these proceedings.

- (9) The Armed Forces of Pakistan, under the directions of Federal Government, defend Pakistan against external aggression or threat of war and, subject to law, are to act in aid of civil power when called upon to do so under Article 245 of the Constitution, thus, any extra-constitutional act, calls for action in accordance with the Constitution of Pakistan and the law against the officers/officials of Armed Forces without any discrimination.
- (10) The Armed Forces have always sacrificed their lives for the country to defend any external or internal aggression for which it being an institution is deeply respected by the nation.
- (11) The Armed Forces, in discharge of their functions, seek intelligence and support from ISI, MI, etc., and on account of security threats to the country on its frontiers or to control internal situations in aid of civil power when called upon to do so. However, ISI, MI or any other Agency like IB have no role to play in the political affairs of the country such as formation or destabilization of government, or interfere in the holding of honest, free and fair elections by Election Commission of Pakistan. Involvement of the officers/members of secret agencies i.e. ISI, MI, IB, etc. in unlawful activities, individually or collectively calls for strict action being, violative of oath of their offices, and if involved, they are liable to be dealt with under the Constitution and the Law.

- (12) Any Election Cell/Political Cell in Presidency or ISI or MI or within their formations shall be abolished immediately and any letter/notification to the extent of creating any such Cell/Department (by any name whatsoever, explained herein, shall stand cancelled forthwith.
- (13) Late Ghulam Ishaq Khan, the then President of Pakistan, General (R) Aslam Baig and General (R) Asad Durrani acted in violation of the Constitution by facilitating a group of politicians and political parties, etc., to ensure their success against the rival candidates in the general election of 1990, for which they secured funds from Mr. Younas Habib. Their acts have brought a bad name to Pakistan and its Armed Forces as well as secret agencies in the eyes of the nation, therefore, notwithstanding that they may have retired from service, the Federal Government shall take necessary steps under the Constitution and Law against them.
- (14) Similarly, legal proceedings shall be initiated against the politicians, who allegedly have received donations to spend on election campaigns in the general election of 1990, therefore, transparent investigation on the criminal side shall be initiated by the FIA against all of them and if sufficient evidence is collected, they shall be sent up to face the trial, according to law.  
Mr. Younas Habib shall also be dealt with in the same manner.
- (15) Proceedings shall also be launched against the persons specified hereinabove for affecting the recovery of sums received by them with profit thereon by initiating civil proceedings, according to law.
- (16) An amount of Rs.80 million, statedly, has been deposited in Account No. 313 titled Survey and Construction Group Karachi, maintained by MI,

therefore, this amount with profit shall be transferred to Habib Bank Ltd. if the liability of HBL has not been adjusted so far, otherwise, the same may be deposited in the treasury account of Government of Pakistan.

Chief Justice

Judge

Judge

Islamabad, the  
19<sup>th</sup> October, 2012  
Nisar/\*

Approved For Reporting