

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Constitution Petition No. _____/2011

Mohammad Nawaz Sharif,

PETITIONER

Versus

Federation of Pakistan etc.

RESPONDENTS

For the Petitioner:

Mr. Arshad Khan Jadoon, Advocate Supreme
Court with M.S. Khattak, Advocate-on-Record.

For the Respondents:

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Certified that the paper-book has been prepared in accordance with the Rules of the Court and that all documents necessary for appreciation of the case have been included.

Dated. _____

M.S. Khattak
Advocate-on-Record
Supreme Court of Pakistan, Islamabad.

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

CONSTITUTION ORIGINAL PETITION No. _____ of 2011

MOHAMMAD NAWAZ SHARIF, President
Pakistan Muslim League (Nawaz), Jati Umra,
Railwind Road, LAHORE.

... PETITIONER

Versus

1. THE FEDERATION OF PAKISTAN, through
the Secretary, Ministry of Interior,
Federal Secretariat, ISLAMABAD.
2. THE SECRETARY, Ministry of Foreign Affairs,
Government of Pakistan, ISLAMABAD.
3. MR. ASIF ALI ZARDARI, President's House,
ISLAMABAD.
4. HUSSAIN HIAQQANI, Pakistan's Ambassador
to United States of America c/o The
Ministry of Foreign Affairs,
ISLAMABAD.
5. MANSOOR IJAZ, contributor of an article titled
'TIME TO TAKE ON PAKISTAN'S
JIHADIST SPIES' published in the issue
of Financial Times dated October 10,
2011 c/o The Ministry of Foreign Affairs,
ISLAMABAD.

6. GENERAL ASHFAQ PERVEZ KIYANI, Chief of Staff, Pakistan Army, G.H.Q., RAWALPINDI.
7. LT. GENERAL AHMED SHUJA PASHA, Head of the Inter Services Intelligence, Government of Pakistan, ISLAMABAD.

.. RESPONDENT

PETITION

under Article 184 (3) of the Constitution of Islamic Republic of Pakistan.

Respectfully states;

1. That the petitioner has the honour and the pride of being a citizen of Pakistan. He is also blessed with the Presidentship of the Pakistan Muslim League (N) and has had the privilege, twice, of serving his people and his country as the Prime Minister. Gravely dismayed by the disclosure of certain facts which threaten the very existence of his motherland, the petitioner approaches this August Court craving for its indulgence and intervention to come to the aid of his homeland and to rescue it from the clutches of those who wish it dead.

2. That the petitioner had been appalled to read an article published in an issue of the Financial Times dated October 10, 2011 authored by Mansoor Ijaz respondent wherein it had been claimed, inter-alia, that:

"Early on May 9, a week after US Special Forces stormed the hideout of Osama bin

Laden and killed him, a SENIOR PAKISTANI DIPLOMAT telephoned me with an urgent request. ASIF ALI ZARDARI, Pakistan's President, needed to communicate a message to WHITE HOUSE national security officials that would bypass Pakistan's military and intelligence channels.
.....He needed an AMERICAN FIST on his ARMY CHIEF'S DESK to end any misguided notions In a flurry of phone calls and emails over two days a MEMORANDUM was crafted that included a CRITICAL OFFER from the Pakistani president to the OBAMA ADMINISTRATION The MEMO was DELIVERED to ADMIRAL MULLEN at 14:00 hours on May 10."

(emphasis and under lining has been supplied)

A copy of the said article dated October 10, 2011 is appended herewith as ANNEXURE P/1.

3. That after the publication of the said article in one of the respectable international news-papers, Ambassador Hussain Haqqani respondent at the Presidency in Pakistan, dismissed the said author's claim by lightly brushing it aside as a mere 'FANTASY'. This denial also found support in the comments offered by a spokesman of Admiral Mike Mullen published in 'THE CABLE' to the effect that:

"Adm. Mullen does not know Mr. Ijaz and has no recollection of receiving any correspondence from him."

4. That these denials emanating from such responsible sources as above-mentioned did, to some extent, put at rest the agitated patriotic Pakistani mind but then the said Mansoor Ijaz respondent shot back through an article in the daily 'THE NEWS' of Pakistan, wherein he insisted and reiterated that:

"There can be no doubt a memorandum was drafted and transmitted to Admiral Mullen WITH THE APPROVAL OF THE HIGHEST POLITICAL LEVEL in Pakistan and that the admiral received it with certainty from a source whom he trusted and who also trusted me."

The said Mansoor Ijaz respondent then also released the evidence which included Blackberry Messenger conversation which he had had, allegedly, with Ambassador Hussain Haqqani respondent while the said ambassador was staying in room no. 430 of Park Lane International Hotel in London.

A copy of the transcript of the said conversation released by the said Mansoor Ijaz as published in the issue of November 18, 2011 of the daily 'THE NEWS' is appended as ANNEXURE P/II.

5. That in the meantime, a frightfully disturbing comment also came from the spokesman of Admiral Mike Mullen to the effect that:

"Admn. Mullen had no recollection of the memo and no relationship with Mr. Ijaz. After the original article appeared on Foreign Policy's website, he felt it incumbent upon himself to check his memory. He reached out to others who he believed might have had knowledge of such a memo, and one of them was able to produce a copy of it."

This confirmation of the existence of the mysterious memo in question and its receipt by Chief of Staff of the U.S. Armed Forces, was a shocking disclosure of how brazenly, the national interests were being put at a stake, if all this was true, and that also only for petty personal gains.

A copy of a transcript from 'THE CABLE', down-loaded from the internet is appended as ANNEXURE P/III.

6. That the further blow to a patriotic mind came from the availability of the said, no longer mysterious memorandum, which had since been made public by those possessed of the same. The said memo, which now stands published and is available even on the internet reads as under:

"CONFIDENTIAL MEMORANDUM

BRIEFING FOR ADM. MIKE MULLEN, CHAIRMAN, JOINT CHIEFS OF STAFF

During the past 72 hours since a meeting was held between the president, the prime minister and the chief of army staff, there has been a significant deterioration in Pakistan's political atmosphere. Increasingly desperate efforts by the various agencies and the factions within the government to find a home - ISI and/or Army, or the civilian government - for assigning blame over the UBL raid now dominate the tug of war between military and civilian sectors. Subsequently tit-for-tat reactions, including outing of the CIA stations chief's name in Islamabad by ISI officials, demonstrates a dangerous devolution of the ground situation in Islamabad where no control appears to be in place. Civilians cannot withstand much more of the hard pressure being delivered from the Army to succumb to whole sale changes. If civilians are forced from power, Pakistan becomes a sanctuary for UBL's legacy and potentially the platform for far more rapid spread of al Qaeda's brand of fanaticism and terror. A unique window of opportunity exists for the civilians to gain the upper hand over army and intelligence directorates due to their complicity in the UBL matter. Request your direct intervention in conveying a strong, urgent and direct message to Gen Kayani that delivers Washington's demand for him and Gen Pasha to end their brinkmanship aimed at bringing down the civilian apparatus - that this is a 1971 moment in Pakistan's history. Should you be willing to do so, Washington's political/military backing would result in a revamp of the civilian government that, while weak at the top echelon in terms of strategic direction and implementation (even though mandated by domestic political forces), in a wholesale manner replaces the national security adviser and other national security officials with trusted advisers that include ex-military and civilian leaders favourably viewed by Washington, each of whom have long and historical ties to the US military, political and intelligence communities. Names will be provided to you in a face-to-face meeting with the person delivering this message. In the event Washington's direct intervention behind the scenes can be secured through your personal communication with Kiyani (he will likely listen only to you at this moment) to stand down the Pakistani military-intelligence establishment, the new national security team is prepared, with full backing of the civilian apparatus, to do the following:

1. President of Pakistan will order an independent inquiry into the allegations that Pakistan harbored and offered assistance to UBL, and other senior Qaeda operatives. The White House can suggest names of independent investigators to populate the panel, along the lines of the bipartisan 9-11 Commission, for example.

2. The inquiry will be accountable and independent, and result in findings of tangible value to the US Government and the American people that identify with exacting detail those elements responsible for harboring and aiding UBL, inside and close to the inner ring of influence in Pakistan's Government (civilian, intelligence directorates and military). It is certain that the UBL Commission will result in immediate termination of active services officers in the appropriate government offices and agencies found responsible for complicity in assisting UBL.

3. The new national security team will implement a policy of either handing over those left in the leadership of Al Qaeda or other affiliated terrorist groups who are still on Pakistani soil, including Ayman Al Zawahiri, Mullah Omar and Sirajuddin Haqqani, or giving US military forces a "green light" to conduct the necessary operations to capture or kill them on Pakistani soil. This "carte blanche" guarantee is not without political risks, but should demonstrate the new group's commitment to rooting out bad elements on our soil. This commitment has the backing of the top echelon on the civilian side of our house, and we will insure necessary collateral support

4. One of the fears of the military intelligence establishment is that with your stealth capabilities to enter and exit Pakistani airspace at will, Pakistan's nuclear assets are now legitimate targets. The new national security team is prepared, with full backing of the Pakistani government – initially civilian but eventually all three power centers – to develop an acceptable framework of discipline for the nuclear program. This effort was begun under the previous military regime, with acceptable results. We are prepared to reactivate those ideas and build on them in a way that brings Pakistan's nuclear assets under a more verifiable, transparent regime.

5. The new national security team will eliminate Section 5 of the ISI charged with maintaining relations to the Taliban, Haqqani network, etc. This will dramatically improve relations with Afghanistan.

6. We are prepared to cooperate fully under the new national security team's guidance with the Indian government on bringing all perpetrators of Pakistani origin to account for the 2008 Mumbai attacks, whether outside government or inside any part of the government, including its intelligence agencies. This includes handing over those against whom sufficient evidence exists of guilt to the Indian security services.

Pakistan faces a decision point of unprecedented importance. We, who believe in democratic governance and building a much better structural relationship in the region with India AND Afghanistan, seek US assistance to help us pigeon – hole the forces lined up against your interests and ours, including containment of certain elements inside our country that require appropriate re-sets and re-tasking in terms of direction and extent of responsibility after the UBL affair.

We submit this memorandum for your consideration collectively as the members of the new national security team who will be inducted by the President of Pakistan with your support in this undertaking.

(underlining has been added)

A copy of the same is appended as ANNEXURE P/IV

7. That a bare perusal of the above-quoted memorandum in question and its mutinous and treasonous contents would be a shocking, repulsive and a harrowing experience for any patriotic Pakistani. To say the least, the said contents, inter-alia:-

- a, accuse the State of Pakistan of harbouring terrorists by declaring that the top Al-Qaeda leadership like Ayman Al Jawahiri and Mullah Omar, were based in Pakistan and the author undertakes to hand them over to those who seek them which fact alone would be sufficient to declare Pakistan a rogue terrorist state with disastrous consequences;
- b, declare the Armed Forces of Pakistan and her intelligence agencies to be guilty of ".... THEIR COMPLICITY IN THE UBL (Usama bin Laden) MATTER."
- c, invite "DIRECT INTERVENTION" for a "FOREIGN FIST" on the desk of Pakistan's Army Chief to bully the National Army and to be scared, unnerved and terrorised by foreign hands;
- d, also accuse the Armed Forces of Pakistan of 'BRINKSMANSHIP' aimed at bringing down the civilian apparatus in Pakistan; and consequently,

e, offer as a plan and an invitation to a FOREIGN HAND to demolish the national security apparatus of the country,

f, also seek 'FOREIGN' political/military backing to replace, amongst others, the national security advisor and other national security officials (high officers of the Armed Forces) and to bring in the ones who are "FAVOURABLY VIEWED" by a named, foreign power and who had "LONG AND HISTORICAL TIES" with the "MILITARY, POLITICAL AND INTELLIGENCE COMMUNITIES" of the said named foreign State.

8. That in return for the favour of terrorising, humiliating, subverting and subjugating the National Armed Forces:

a, it was undertaken to order an inquiry against Pakistan itself regarding the allegation of harbouring Osama Bin Laden and offering assistance to him and to other senior Qaeda operatives, to be held by a Panel COMPRISING PERSON TO BE NAMED by the said FOREIGN STATE which inquiry was then to "..... RESULT IN FINDINGS of tangible VALUE" to the said named State and its people and which inquiry would also identify persons of influence in Pakistan's Government who may be civilians or members of the intelligence directorates or of the Army who has offered assistance to Osama and

others of the like and whose services shall then be terminated;

b. a commitment was also made that the NEW NATIONAL SECURITY TEAM' shall IMPLEMENT a POLICY whereby the alleged AL-QAEDA leaders 'and other terrorists who ARE STILL ON PAKISTANI SOIL' shall be handed over to the said named State or 'GREEN LIGHT' (permission) would be given to the 'MILITARY FORCES' of the said State to 'CONDUCT NECESSARY OPERATIONS TO CAPTURE OR KILL THEM ON PAKISTANI SOIL';

c. it was further committed that a new framework to 'DISCIPLINE.....THE NUCLEAR PROGRAM' which would be 'ACCEPTABLE' to the said named State and 'PAKISTAN'S NUCLEAR ASSETS' would be brought under a 'MORE VERIFIABLE, TRANSPARENT REGIME'.

9. That it was also frightening to read through the 'FINANCIAL TIMES' of November 17, 2011 which quoted MANSOOR IJAZ having told them that:

"Hussain Haqqani, whom I have known for over 10 years, WAS INDEED THE SENIOR PAKISTANI DIPLOMAT who ASKED ME to assist him in PRIVATELY DELIVERING HIS MESSAGE TO ADMIRAL MULLEN"

(emphasis and underlining has been added)

As per the said news-paper, the said Mansoor Ijaz, while describing the "BOSS" whose approval was awaited before doing the said needful, has explained that:

"THAT WAS AN OBVIOUS REFERENCE TO
PRESIDENT ZARDARI".

(emphasis and underlining has been added)

A copy of the said news-paper of the said date is appended as ANNEXURE P/V.

10. That, as has been submitted above, the above-mentioned article (Annexure P/1) authored by Mansoor Ijaz respondent appeared in the Financial Times on October 10, 2011 i.e. more than FORTY DAYS ago which was followed by further fateful reports appearing not only in the said news-paper but even in a national newspaper i.e. 'The News', but what to talk of suing the said news-papers for defamation etc., not even a notice had been issued to them nor even a formal protest had been lodged with them by the Government of Pakistan or by the two concerned persons i.e. Ambassador Hussain Haqqani respondent and President Asif Ali Zardari, which conduct then speaks volumes of the veracity of the said Mansoor Ijaz's claim.

11. That the contents of the MEMORANDUM in question (ANNEXURE P/IV) are designed not only to demoralize and cowdown the Armed Forces of Pakistan which is a national asset being a national institution obligated to defend the country and its people by seeking foreign intervention for the said purpose but it also threatens the very foundation and the future of Pakistan by trading away its sovereignty for petty personal gains.

12. That the act in question of the ones who initiated the said memorandum; the ones who rendered any help or assistance in the matter and those who blessed or approved of it are culpable for acts of high treason against the State and the Constitution and also culpable under other relevant laws of the land besides being guilty of disloyalty to the State contravening the relevant constitutional command (Article 5).
13. That despite demands made by the Petitioner a former Prime Minister of Pakistan, no steps at all have been taken by the competent authorities to set up any independent committee or commission to look into the fateful affair in question. The petitioner would have ordinarily approached the Parliament to take stock of the said situation but the fate of the resolutions of the Parliament regarding DRONE attacks and others, compels the petitioner to look to other independent and effective fora for the purpose.
14. That since the very existence of the State stands put at stake thereby threatening the fundamental rights of the people to life, liberty, property, trade, business and profession as guaranteed by Articles 9, 14, 15, 16, 23, 24, of the Constitution, therefore the petition which involves serious questions of public importance relating to the enforcement of the said fundamental rights, deserves immediate attention of this August Court.

WHEREFORE, it is respectfully prayed, in the name of Pakistan; in the name of those who founded it with their sweat and blood and in the name of those who are still sacrificing their lives for its glory, that:

- a, all the respondents be summoned to appear before this Honourable Court in person to explain the detestable, the despicable and the treacherous MEMORANDUM in question;

- b, the ones responsible and/or involved in initiating the process leading to the said memorandum; authoring the same; providing any assistance whatsoever in the process and the ones blessing or approving the said act, may graciously be identified;
- c, the dreadful conspiracy to demonise, to ridicule, to malign and consequently to demoralise and terrorise and resultantly to destroy the invaluable and valiant Armed Forces of Pakistan; to trade away the sovereignty of Pakistan and to barter away the very existence and the future of Pakistan which also amounts to waging a war against Pakistan, be un-earthed; and
- d, the culprits exhibiting grave disloyalty to the State and the people of Pakistan and who are found guilty of the crimes as afore-said be brought to book.

Any other, better and appropriate relief or action warranted by the stated or the discovered facts, may also be graciously granted or taken.

FILED BY
M. S. KHATTAK
ADVOCATE ON RECORD
SUPREME COURT OF PAKISTAN
ISLAMABAD

Drawn by
 (Arshad Jadoon)
 ASC

As per instructions, it is the first Constitutional Petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan before this Hon'ble Court. The Petitioner has not previously filed a Writ Petition in the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan.

Advocate on Record