

## IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Mohammad Karim Khan Agha

1. C. P. No.D-1125 of 2007.  
(Suo Moto Reference).

2. C.P. No.D-1144 of 2007.

Syed Iqbal Kazmi and others. . . . . Petitioners.

Versus

Federation of Pakistan and others. . . . . Respondents.

Petitioner	In person Syed Iqbal Kazmi
On court Notice	Mr. Salman Talibuddin, Additional Attorney General of Pakistan, Mr. Ali Haider, Additional Prosecutor General, Mr. Hakim Ali Shaikh, Additional Advocate General, Mr. Rashid A. Rizvi Advocate and Mr Muhammed Hamid Khan, Additional Inspector General (Legal).
Amicus Curiae	Mr. Faisal Siddiqui Advocate and Mr. Shahab Sarki Advocate
Date of hearing	01-06-2018, 06-06-2018, 20-06-2018, 22-06-2018, 11-08-2018 and 13-08-2018
Date of judgment	11-09-2018

### J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J.**-By this common order we propose to dispose of CP D1144/2007 and CP.D 1125/2007 whereby this bench was constituted by the Hon'ble Chief Justice of the Sindh High Court pursuant to order dated 12.05.2018 in Suo Motu Action Taken in Court (S.M.C.21/2018) passed by the Hon'ble Supreme Court which reads as under:

“At the beginning of the proceedings today, the learned ASCs, present in the Court, have apprised about the sad incident of 12.05.2007. On Court's query, it has been apprised the Constitution Petition No.1144-D/2007 is pending before the learned High court of Sindh. We have summoned the record of the noted matter and on our examination of the order-sheet, it transpires that the matter is



pending since number of years and no fruitful progress in the matter has taken place. Therefore, we direct the Register of the learned High Court of Sindh to fix the above-noted matter on 28.5.2018 and we are sanguine that the learned Bench before which the matter will be fixed, shall decide the same within a period of three months positively. We further direct the Registrar of the High Court of Sindh to submit monthly progress report of the matter for our perusal in Chambers. The record of the High Court is hereby returned."

2. The facts concerning both of the petitions concern events which occurred in Karachi on 12<sup>th</sup> May 2007 when the then non functional Chief Justice of Pakistan His Lordship Iftikhar Muhammed Chuadhry as he then was (CJP) came to visit Karachi on the invitation of the Sindh High Court Bar Association in connection with its 50<sup>th</sup> Anniversary. It should be noted that the then CJP had been declared non functional pursuant to orders passed by the then President and Chief of Army Staff President/General Pervez Musharaff and a reference was pending against him before the Supreme Judicial Council (SJC) for alleged misconduct. The legal fraternity by way of the so called lawyers movement had seen this act of declaring the then CJP non functional and then filing a reference against him before the SJC by the then President and Chief of Army Staff President/General Pervez Musharaff as an assault on the Independence of the Judiciary and had thrown its weight behind the then CJP and as such it was anticipated that he would be well received by the legal community on his visit to Karachi through a show of solidarity.

3. At that time tensions were running high in the city and the Home Secretary Government of Sindh had advised the then CJP to cancel his visit. The then CJP however decided to continue with his visit to Karachi and a well planned schedule of his route and his engagements had already been provided to the Government of Sindh. In CP D No.1620/2007 moved by **Pakistan International Human Rights Organization** fearing that both the Federal Government and Provincial Government would not provide adequate security to the then CJP on his visit to the city on 12<sup>th</sup> May 2007 made the following prayers

- (A) To direct the Respondents No.1 to 4 (1.Federation of Pakistan, through Secretary Ministry of Interior, 2. Province of Sindh through its Chief Secretary, 3.Home Secretary Government of Sindh and 4.IGP Sindh) to provide foolproof security to the Hon'ble Chief Justice Mr. Iftikhar Muhammad Chaudhry during his visit to Karachi on 12.05.2007 while addressing the Malir Judicial Complex, Karachi Bar Association, High Court Bar Association and at the time of offering prayer at the Moslem of Quaid-e-Azam and it is further prayed that



while passing from the roads wherefrom the rally will pass tight security measures may be provided.

(B) To direct the Respondents No.1 to 4 **no human violations shall occur on 12.05.2007 at visit of Chief Justice in Karachi.**

(C) Any other relief, which deems fit and proper in the circumstances of the case. (bold added)

4. After hearing arguments from both sides this Court on 11-05-2007 passed the following order which in material part reads as under;

“ We have heard all the Learned Counsel, Learned Standing Counsel and Learned Addl. A.G. and perused the Petition and also statement placed on record. **In our opinion, it is the duty of the Federal Government and Government of Sindh to accord foolproof security / protection for the Hon'ble Chief Justice of Pakistan. Consequently, we would direct the Federal Government as well as Government of Sindh to ensure that such security measures are taken during the visit of Hon'ble Chief Justice to Karachi on the route of his choice.** Petition stands disposed of in the above terms. A copy of this order shall be sent to Learned Standing Counsel and Learned Addl. A.G.”(bold added)

5. Thus, as per directions of this court it was the responsibility of both the Federal and Provincial Government to provide full proof security to the then CJP on 12<sup>th</sup> May 2007 from the time he arrived at Karachi airport until he had completed his program and left Karachi. The route of the then CJP was well known in advance by those at the helm of affairs in the provincial government and most probably the concerned high ups in the Federal Government.

6. It appears that before the then CJP was due to reach Karachi on 12<sup>th</sup> May 2007 by air from Islamabad and despite the orders of this Court plans were made by the provincial government to block nearly every route leading from Karachi Quaid-i-Azam International Airport (where the then CJP would arrive) to the District Courts at Malir, the City and High Courts with containers from the Karachi Port Trust (KPT) and other places. It appears from the record that the placement of these containers may not have been made primarily for security purposes to enable the safe passage of the then CJP from the airport to his destination **as these containers completely blocked the roads with no way around them and were not manned by police or other law Enforcement Agencies (LEA's) to ensure law and order.** It also prima facie appears that these blockages were made not to ensure the protection of the then CJP during his schedule in Karachi including addressing about 8,000 advocates but rather to ensure that the then CJP was deliberately prevented from leaving Karachi airport



in order to fulfill his proposed schedule in the city after his arrival at Karachi airport.

7. In the event when the then CJP arrived at Karachi airport on the morning of 12<sup>th</sup> May 2007 a serious law and order situation broke out in Karachi. The city was almost entirely shut down even before his arrival, many citizens were killed and injured due to the firing of various miscreants; both the High Court and City courts were completely surrounded and blocked off and besieged by threatening angry mobs; Judges let alone litigants were not permitted to reach the courts which led to the complete denial of access to justice on that day to the citizens of Karachi whilst the LEA's, it appears from the record, looked on as silent spectators who choose to turn a blind eye to the illegal activities going on all around them; the then CJP was unable to leave the airport due to this law and order situation and had to return to Islamabad.

8. On 21/5/2007 the Incharge Registrar of this court moved the following note to the then Chief Justice of this court concerning the above incident:

1. "It is respectfully submitted that on 12<sup>th</sup> May 2007, at about 7.45 a.m, Mr. Fida Hussain, PS to the undersigned had informed me on my Mobile phone **that the entire High Court premises was surrounded by a mob and they were not allowing anybody, including advocates and members of the staff, to enter into the Court premises and the police was not helping in that respect.**

2. "When at 8.00 a.m, I, on my official car proceeded to the Hon'ble High Court for attending to my duties, **I found that each and every road leading to the High Court, was blocked by putting containers, Buses and Tankers, therefore, I could not find a way to enter into the High Court premises. Particularly, I found that the High Court Building was surrounded by a mob, and they were stopping every body from entering into High Court premises. The police force available there was not taking any action against the miscreants and they were sitting as silent spectators.**

3. "I then went to the building of my flat, which is in the same vicinity and parked my car there. Mr. Zulfiqar Ali Shaikh, OSD (Judicial) reached there and he also parked his car there. Then, we both came on foot and managed to enter into the High Court premises. **When, I was in my office, District & Sessions Judges Karachi-West and Karachi-South, informed me on telephone that City Court premises were also sieged by miscreants and they were not allowing anybody to enter into the City Court premises. They also informed that the roads leading to City Court premises were barricaded and had been "blocked". Police was not taking any action.**



4. "It was also informed that the miscreants had also maltreated and given beating to the advocates, including one senior lady advocate, Mrs. Ismat Mehdi and resultantly, a number of advocates had received injuries.

5. "When the Hon'ble Chief Justice and the Members of the Administration Committee arrived in the High Court, they were disturbed by the fact that access to the Court had been blocked from various entry points preventing the Judges, Court staff, Advocates and litigant public from attending the Court. Their Lordships directed the undersigned, to call the Home Secretary and the Provincial Police Officer, who are required to make security arrangements, to meet their Lordships in the Chamber of Hon'ble Chief Justice and explain their position.

6. "The Provincial Police Officer was not found available, but the Capital City Police Officer and the concerned Town Police Officer appeared and offered their explanation, stating that they had also arrived on foot and they themselves were helpless. Subsequently, the Home Secretary also appeared and undertook to do his best. But the situation remained the same.

7. "It is also worthwhile to mention that the undersigned being the Incharge Registrar of the High Court had to receive the Hon'ble Chief Justice of Pakistan at the Airport. But, because of the blockade I was not able to reach the Airport. The official car which we had sent for the use of the Hon'ble Chief Justice of Pakistan had also not reached the Airport, as informed by the its driver Mr. Saleem, all roads leading to Airport were completely barricaded and blocked. When the Home Secretary, Government of Sindh, had called upon the Hon'ble Chief Justice, he conceded that all roads leading to the Airport had been blocked and offered me to accompany him there on a helicopter. I then, went with him to the Airport on a helicopter, where I received the Hon'ble Chief Justice of Pakistan. Since all the roads were blocked, therefore, the Hon'ble Chief Justice of Pakistan, was not able to come to the High Court and I remained with His Lordship at the Airport till about 08.00 p.m., when His Lordship boarded the plane for Islamabad. When, I returned back from the Airport at about 9.30 p.m on the official car, the blockade was found to have been removed.

8. "Because of the blockade of roads leading to and siege of the High Court premises, a number of the Hon'ble Judges had also faced hardships, which is evident from the D.O letters dated 15.05.2007 and 17.05.2007 (Flags-A, B, C & D) sent by the P.S Protocol of Hon'ble Justice Azizullah M. Memon, P.S Protocol of Hon'ble Mr. Justice Maqbool Baqar, P.S Protocol of Hon'ble Mr. Justice Mohammed Ather Saeed and PS Protocol (without date) to Hon'ble Justice Mrs. Yasmin Abbasey and information communicated by driver of Hon'ble Mr. Justice Sajjad Ali Shah, in his letter (Flag-E). (bold added)

9. Submitted for kind perusal and orders.



**Hon'ble Chief Justice**

**Azizullah Memon J.**

I am directed by Honourable Mr. Justice Azizullah M.Memon that on 12<sup>th</sup> May 2007, driver Muhammad Ishaque and Hawaldar Muhammad Naseer, both, **informed his lordship by phone, that roads leading to the High Court were "blocked" and even people were not being allowed to go towards their respective destinations by foot; however, gunman Allahyar, residing near Boat Basin, managed to reach the residence of his lordship.**

**At about 12:00 Noon, his lordship proceeded to reach the High Court premises by self-driving the official motor car with gunman Allahyar, through a dilapidated road of Hijrat Colony, to attend to his official duties, but roads were found barricaded and "blocked" all around, and armed people surrounding the High Court premises; hence his lordship could not enter the same and returned back (bold added)**

(Javed Qazi)

P.S.Protocol to Honourable  
Mr. Justice Azizullah M.Memon

The Registrar,  
High Court of Sindh  
Karachi.

**Maqbool Baqar J.**

As directed by Honourable Mr. Justice Maqbool Baqar, I am conveying to you the facts narrated by His Lordship's driver, Muhammad Saleem regarding 12<sup>th</sup> May, 2007, as follows:-

On 12<sup>th</sup> May 2007 while driving his Lordship to the High Court in the official car at about 9.30 a.m, Muhammad Saleem reached near F.T.C. building on Shahrah-e-Faisal, **he found his track of the road completely blocked by a bus and a tanker horizontally parked in the middle of the road, he therefore had to return back to Shahrah-e-Qaideen through Shahrah-e-Qaideen Flyover. Since there was no traffic, he then entered the other track of Shahra-e-Faisal, but this track also was found blocked by a passenger coach, just short of Saddar Police Station. Muhammad Saleem therefore turned back the car and drove over the F.T.C. Flyover but had to return back as the said flyover also was blocked by a sand laden truck. He however, drove the car to the Korangi road/National Highway, through the other track of the flyover but was disappointed to find the road blocked with a heavy vehicle parked across the road. He, therefore drove back towards Shahra-e-Qaideen, but found the same blocked near Khudadad Colony, and then via Tariq Road and Shaheed-e-Millat Road and from in-front of**



Islamia College, reached Guru Mandar, but there also could not turn left, as the same was blocked and had to proceed towards Soldier Bazaar. Continuing in this direction, he could not find any exit towards M.A. Jinnah Road and thus reached near Pan Mandi, since here also the road towards M.A. Jinnah Road was blocked near Tahir Plaza by a crowd, carrying flags of a political party, he then attempted to proceed towards his right side but found the passage blocked by a trench dug across the road. He therefore turned the car and went back towards Bohrapir, and managed a passage alongwith the Kidney Centre (SUIT) and reached the section of M.A. Jinnah Road near Jamia Cloth Market. Since at that point, he was wondering as to in what direction to proceed, his Lordship contacted Honourable Mr. Justice Mushir Alam, who had already reached the High Court building and guided Justice Baqar on his cell phone through Fresco Chowk upto Burns Garden and informed his Lordship that except through the road in front of Sindh Secretariat all other passages/roads including those from Masjid-e-Khizra, MPA Hostel, Arts Council and Shahrah-e-Iraq are blocked his Lordship thus reached the High Court from in front of the Sindh Secretariat Building.(bold added)

(Jawed Kazi)  
P.S.Protocol to Honourable  
Mr. Justice Maqbool Baqar

The Registrar,  
High Court of Sindh  
Karachi.

Athar Saeed J.

Submitted

On Saturday 12<sup>th</sup> May 2007 an unpleasant incident took place @ Nazimabad chowrangi in front of Sir Syed Girls College when two motor cars blocked the passage of the official car bearing No:H-C 0125 of Hon'ble Mr. Justice Mohammad Athar Saeed on way to High Court of Sindh from his residence and the car was prevented from turning away from main road. Finally at Nazimabad second chowrangi when the driver tried to turn right towards Pak Colony he was stopped by a young man who commanded him to stop and as soon as he stopped the car one of the above cars hit his car from rear side causing dent and heavy damages to the rear bumper. Immediately the car was surrounded by a number of people and one young man snatched the keys and demanded compensation from driver of the Hon'ble Judge. The mob surrounded the car and raised blows on the car and used rude language and broke flag road with kicks and punches. After some time on interference of some persons keys were returned to the driver and he drove away from the spot. The Hon'ble Judge then reached the P.S Pak Colony where after about 45 minutes he was personally escorted by the S.S.P Investigation Mushtaq Maher towards High Court but when he reached Aiwan-e-Sadder Road it was observed that the lane going towards High Court from P.S. Artillery Maidan was closed due to parking of public buses in the entire lane. The traffic police also informed the Hon'ble Judge that there was no access to the High Court by car therefore Hon'ble



Judge got his car parked at D.I.G. Office and proceeded on foot to the High Court with his gunman and driver. **The passage was very narrow and thronged by a hostile mob and the Hon'ble Judge was greeted by hostile glances and stares and in this tense atmosphere he approached and entered the High Court through the side gate opening in the secretariat barracks. (bold added)**

(Munir A. Ghangro)  
P.S. Protocol to  
Justice Mohammad Ather Saeed

Learned Registrar

**Yasmin Abbasey J.**

**The Hon'ble Justice Mrs. Yasmin Abbassey desired me to intimate you that on 12.05.2007 her-ladyship tried her level best to reach in the High Court but all the ways leading to the High Court of Sindh were abandoned with buses and containers. Her ladyship noticed that the roads were closed with abandoned buses and containers. Miscreants and workers of a political Party holding arms and flags were roaming throughout the way. Consequently her ladyship could not reach office and returned back.**

Hon'ble Judge has desired that the situation be brought in the knowledge of the Hon'ble Chief Justice. (bold added)

PS(P) to Justice  
Mrs. Yasmin Abbasey

Learned Registrar

**Sajjad Ali Shah J**

"To,

The Respected Registrar,  
High Court of Sindh,  
Karachi.

Respected Sir,

It is submitted that on Saturday, the 12<sup>th</sup> May 2007 at 09:30 a.m. morning in High Court Car No.0131 I was bringing the Honourable Mr. Justice Sajjad Ali Shah to High Court and when reached near Sub-Marine Chowk found that way was completely blocked. Many containers – water tankers were parked at so many places thereby no vehicle and even a person could pass out from them. Therefore, I stopped the vehicle. In the meantime, some armed persons came towards us. At the same time, one Rangers Jeep having a Flag



reached there. Other Vehicles/Jeeps in which Rangers personnel were sitting also coming in front and behind the said Flagged Jeep. I drove my vehicle behind the said Rangers vehicles. On the directions of the said Rangers jeep some passage was made and I obtaining the benefit of such passage drove away our vehicle. **Thereafter, I also found that at so many places the road was blocked by putting hindrances, but I proceeding continuously by availing passage along with the Rangers jeeps. When Rangers Flagged Jeep entered in their Headquarter then our vehicle remained single and near Shaheen Complex I found that road was again closed through many hindrances. Thereafter, I tried to go out through another way but Saddar YNCA and Zaibun-Nisa street were completely closed. Road was completely closed by standing huge tankers and vacant buses. Thereafter, with the permission of Honourable Judge I turned the vehicle towards Artillery Maidan, but the road was also closed. Lastly, I parked our vehicle inside the police station and then we alongwith the Honourable Judge reached the High Court on foot. At all places police was deployed but they made excuses to do any help, even when armed persons came towards our vehicle at that time police was standing at the distance of some passage but they did not come to our help. If police wanted then they may helped us. They did not help us for unknown reasons. I intended to bring the above details within your notice, therefore, I placed the same. (bold added)**

Yours obediently,

Sd/-

Nazeer Hussain

Driver of Mr. Justice Sajjad Ali Shah"

9. On the basis of the above note from the Incharge Registrar and various notes of complaints of some of the drivers/staff of the then sitting Judges of this court a full court meeting was held of all the Judges of this court under the then Chief Justice of the Sindh High Court where the following decision was made on 26-05-2007:

"It is respectfully submitted that in the full Court Judges Meeting of this Court held on 22.05.2007, in the Committee Room, it was decided as under:-

**"The Hon'ble Judges in full Court meeting held on 22.5.2007, have carefully gone through the report dated 21.05.2007 of Incharge Registrar and resolved to suggest that the Hon'ble Chief Justice to take it up as a Constitution Petition, which may be placed for hearing before either the full Court or larger Bench". Copy of minutes of meeting is attached at Flag-F).**

2. The Hon'ble Chief Justice has been pleased to convert the Registrar's Report into a Constitutional Petition and also constituted a Full Bench comprising of the following Hon'ble Judges to hear the same.

1. Hon'ble Mr. Justice Sarmad Jalal Osmany.
2. Hon'ble Mr. Justice Anwar Zaheer Jamali.



3. Hon'ble Mr. Justice Mushir Alam
4. Hon'ble Mr. Justice Azizullah M.Memon.
5. Hon'ble Mr. Justice Khilji Arif Hussain.
6. Hon'ble Mr. Justice Maqbool Baqar.
7. Hon'ble Mr. Justice Ali Sain Dino Metlo.

3. The Hon'ble Chief Justice has further been pleased to direct that the matter be placed before Hon'ble Mr. Justice Sarmad Jalal Osmany for appropriate orders. (Copy of order is at Flag-G).

Submitted for kind perusal and orders.

Incharge Registrar

Hon'ble Mr. Justice Sarmad Jalal Osmany

10. Thereafter the matter was taken up by the aforesaid constituted 7 member bench headed by Hon'ble Mr. Justice Sarmad Jalal Osmany (as he then was).

11. Notice was issued to AG Sindh, AGP, CCPO Karachi, Home Sec, IGP Sindh, Chief Secretary, DG Rangers. On 28.05.2007 which was the first date of hearing notice was also given to the Sindh High Court Bar Association (SHCBA), Karachi Bar Association (KBA), Malir District Bar Association (MDBA), Vice President Sindh Bar counsel and City Government District Karachi (CGDK). Two eminent lawyers were also appointed as amicus curiae in order to assist the court. Namely Mr.Khalid Anwar and Mr.Qazi Faez Issa.

12. From the order sheets it appears that the court was not attempting to fix criminal responsibility for particular acts which had taken place on 12<sup>th</sup> May 2007 such as murder, for which separate FIR's had already been registered, but rather to find out whether this was a pre planned operation by the concerned authorities to deliberately prevent the then CJP from traveling from Karachi airport to carry out his pre arranged schedule (with route provided in advance to the Government of Sindh (GOS) both at the Malir District Courts, City courts and High court and other places where lawyers were gathering to receive him and whether any of the LEA's, government officials (both Federal and provincial) were a part of, or played a role in implementing this plan which led to both the City courts and High court being placed under siege by a violent mob (potentially belonging to a particular political party) which led to the obvious and foreseeable result of not only terrorizing the legal fraternity as well as the citizens of Karachi but also



denying them their fundamental right of access to justice. The court it appears from the record was **not** investigating individuals acts of criminality for which separate FIR's had been registered and were under investigation by the concerned investigative agency. Rather it was trying to see as to how the situation arose on 12<sup>th</sup> May 2007 and if any Government or other official were either directly or indirectly responsible for such a collapse in the law and order situation and denial of access to Justice keeping in view the fact that the provincial Government had advance warning of the then CJP's visit and knew that approx 8,000 lawyers intended to receive him at the premises of the Malir District Bar, City courts and the High Court and had even requested the then CJP to cancel his engagements but quite incredibly it appears had given permission for other political parties some of which were apparently known not to be in favour of the then CJP's visit to hold rallies on the same day and yet it seems such permission to carry out such rallies was not withdrawn despite being fully aware of the pending law and order situation which apart from causing deaths led to continuous firing on at least one media outlet AAJ T.V which was recording the events of the fateful day. Notably the LEA's did not prevent such continuous firing which, prima facie, was an assault on the freedom of the media.

13. Indications that this was the aim of the court can be found in the order of the court dated 08-08-2007 whereby **in addition** to the questions raised by amicus curiae Qazi Faez Issa the court also sought a response to the following **additional** questions which largely concerned command and control aspects;

(a) As to what is the command and control structure of the security apparatus in Sindh;

(b) What are the powers and responsibilities of the police officers of the Law Enforcing Agencies deputed in Sindh in terms of the relevant law viz. the Police Order 2002, the Local Government Ordinance 2001 and the Rangers Act as well as Rules of business.

(c) The concerned Authorities shall also submit Minutes of Meetings held in connection with security arrangements for 12<sup>th</sup> May, 2007.

(d) As to on whose order police authorities were **disarmed** on 12<sup>th</sup> May, 2007 as reportedly they were;

(e) As to what measures the CCPO and the Home Secretary took after they were directed by the Honourable Chief Justice of this Court **to remove the containers/traulers around the High Court premises and to ensure safety and security of the Hon'ble Judges, Lawyers and the General Public.**(bold added)



14. By order dated 07-09-2007 the court sought to find out the role, if any, which the Federal Government may have played in the 12<sup>th</sup> May 2007 incident keeping in view the large no. of CD's, DVD recordings, newspaper cuttings, affidavits and other documents (including a very detailed Report of the Human Rights Commission of Pakistan entitled, "City under Siege: Carnage in Karachi) which had come on record since apparently television footage on the evening of the 12<sup>th</sup> May 2007 appeared to record President /General Pervez Musharraf showing his satisfaction with the events which had transpired in Karachi especially the failure of the then CJP to reach either Malir District Bar, the Sindh City Courts or the Sindh High Court where he was awaiting to be received by lawyers in a show of solidarity. The court desiring to explore this avenue appeared logical based on the material on record and considering the fact that President /General Pervez Musharraf had been instrumental in making the then CJP non functional, filing the reference against him before the SJC and had apparently been displeased by the solidarity shown by the lawyers to the non functional CJP and President /General Pervez Musharraf's perceived close connections with the Government of Sindh. Thus the following order was passed which in material part reads as under:

"By the next date the learned DAG shall seek instructions from the Federal Government as to whether any discussion/meeting took place at the federal level regarding the visit of the Hon'ble Chief Justice of Pakistan to Karachi on 12.05.2007. If so, minutes of such meeting shall be filed along with the supporting affidavit of the concerned officer".

15. On 10-09-2007 (which was on the next date of hearing after passing the above order) perhaps sensing the way the case was going an unruly mob potentially activists of a particular political party (without any interference from the police who were potentially associated with the then coalition Government in Sindh) invaded the court and in effect prevented proceedings. Order dated 10-09-2007 reads as under in this respect.

**"Today, before assembly of the Court, Learned Counsel present as recorded herein above as well as Learned Acting Advocate General, Sindh informed us that the Court Room is packed with an unruly mob, who are likely to create a law and order situation. Even the Courtyard of the High Court leading upto the Passport Side Exit is crowded by such elements. Hence, Learned Counsel have expressed their inability to conduct the case today. We had thereafter called the Registrar of this Court to confirm the aforementioned position and he has also informed**



us that such unruly mob is present in the Court Room, Corridors of the Building as well as in the Courtyard of the High Court and we are perhaps bent upon creating a law and order situation.

Learned Amicus, Mr. Qazi Faiz Esa, also appeared, later and expressed, that if Court assembles it would jeopardize the sanctity of the Court and anything untoward may happen. According to him, adequate security arrangements are also conspicuously missing.

In the circumstances, we are **compelled** to adjourn the proceedings today till next Monday i.e. 17.09.2007 at 8.30 a.m. as we are of the opinion that today no proceedings can be held in view of the prevailing situation. The File be placed before Honourable Chief Justice for appropriate orders." (bold added)

16. After about 12 hearings, receiving comments/affidavits of those concerned along with other relevant documents, after hearing both the amicus curiae and nearly all the parties the matter was almost ripe for judgment however on **03-11-2007 every thing changed** when General Pervez Musharaff in his capacity as Chief of Army Staff (COAS) imposed Emergency and most of the Judges in Pakistan were removed from office. A few judges took oath under the Provisional Constitution Order (PCO) whereby they swore allegiance in effect to General Pervez Musharaff's regime.

17. **The case then took on a different complexion.** The 7 member Bench was no longer in existence (most members having declined to take PCO) and was replaced by a newly constituted 5 member Bench all of whom had taken oath under the PCO and **none** of whom were a part of the original 7 member Bench (despite two of the original 7 member bench being available) **and as such had not heard from the amicus curiae or any of the other counsel (including the Bar Associations) which had almost completed their final arguments.** When notices were again issued for the first time by the newly constituted 5 member bench the issue of the question of maintainability which had been a minor issue and had been impliedly overruled by the 7 member bench as can be seen by the manner in which they proceeded through the order sheets suddenly became a major issue. The amicus curiae boycotted the proceedings and no new amicus curiae were appointed, the advocate general was changed and Dr. Farogh Naseem appointed to this post to plead the case on behalf of the GOS. The SHCBA and other bar associations who had played a pivotal role in assisting the court during the proceedings of the 7 member bench declined to further join the proceedings.



18. In this respect it is of assistance to set out the reasons which amicus curiae Qazi Faez Issa gave for not rendering any assistance to the newly constituted 5 member bench which are set out in his statement dated 16-11-2007 and is reproduced below for ease of reference;

#### STATEMENT

On 12<sup>th</sup> May 2007 inter alia access to the High Court Building was blocked preventing the Hon'ble Judges of the High Court of Sindh from entering the Court and the various complaints made in this regard were converted into Constitution Petition by the Hon'ble Judges in a Full Court meeting held on 22<sup>nd</sup> May 2007. The Full Bench constituted to hear the petition, comprised of the following Hon'ble Judges:

1. Mr. Justice Sarmad Jalal Osmany
2. Mr. Justice Anwar Zaheer Jamali
3. Mr. Justice Mushir Alam
4. Mr. Justice Azizullah M. Memon
5. Mr. Justice Khilji Arif Hussain
6. Mr. Justice Maqbool Baqar, and
7. Mr. Justice Ali Sain Dino Metlo

The Hon'ble Full Bench appointed the undersigned as amicus curiae and the undersigned has been rendering assistance as and when required.

**Surprisingly the petition has not been fixed for hearing before the aforesaid Full Bench. Unless the Judges themselves decline to hear a case, which clearly has not happened, it cannot be affixed before another Bench. The Senior Puisne Judge, Mr. Justice Sarmad Jalal Osmany, and his four senior companion Judges, namely Mr. Justice Anwar Zaheer Jamali, Mr. Justice Mushir Alam, Mr. Justice Khilji Arif Hussain and Mr. Justice Maqbool Baqar have been restrained from entering the High Court, which was one of the reason that resulted in the instant petition. Yet the very same act is being repeated. In view of the fact that amongst others the Federal and Provincial Governments are arrayed as Respondents the attempt to bypass the said Full Bench is a matter of extreme concern.**

The aforesaid learned Judges had taken oath to "preserve, protect and defend the Constitution of the Islamic Republic of Pakistan." A High Court Judge continues in his office until he resigns, retires or dies. Mr. Justice Sarmad Jalal Osmany, Mr. Justice Anwar Zaheer Jamali, Mr. Justice Mushir Alam, Mr. Justice Khilji Arif Hussain and Mr. Justice Maqbool Baqar are all *Masha Allah* alive, have not retired nor have resigned and therefore, continue to be Judges of the Hon'ble High Court of Sindh. Article 5 of the Constitution of the Islamic Republic of Pakistan stipulates, that "obedience to the Constitution and the law is the inviolable obligation of every citizen."

It is therefore incumbent that the petition be fixed for hearing before the aforesaid Full Bench that had heard it for the last about six months.



Amicus Curiae  
Qazi Faez Isa  
Barrister-at-Law  
Advocate Supreme Court of Pakistan.”

19. In his statement before the court on behalf of the SHCBA (which appears to be not on record) but which Mr. Rizvi has now supplied to us in material part reads as under:

**“STATEMENT AT THE BAR ON BEHALF OF SINDH HIGH COURT BAR ASSOCIATION.**

It is respectfully submitted on behalf of Sindh High Court Bar Association as follows:-

1. In order to consider the siege of this Hon’ble Court as referred by the Learned Registrar vide his report dated 21.05.2007 and to consider contempt application under Article 204 of the Constitution 1973, filed by Mr. Abrar Hassan, Mr. Yasin Azad and Mr. Salahuddin Gandapur in C.P. No.1020 of 2007, the Hon’ble Chief Justice was pleased to constitute a full bench comprising following judges:-

- i) Justice Sarmad Jalal Osmany
- ii) Justice Anwar Zaheer Jamali
- iii) Justice Mushir Alam
- iv) Justice Azizullah Memon
- v) Justice Khilji Arif Hussain
- vi) Justice Maqbool Baqar
- vii) Justice Ali Sain Dino Metlo

2. It will not be out of place to mention that in addition to the Reference of learned Registrar dated 21.05.2007, there were other complaints from the Hon’ble Judges regarding highhandedness extended to them including Mr. Justice Azizullah M. Memon, whose Protocol Officer Javed Qazi on 15.5.2007 addressed a letter to the Registrar. Likewise, Private Secretaries of Justice Maqbool Baqar, Mrs. Yasmin Abbasey and Justice Mohammad Athar Saeed also made complaints to the Registrar.

3. That on 3<sup>rd</sup> November, 2007 General Pervez Musharraf illegally, unconstitutionally and with malafide imposed Emergency, suspended the Constitution, 1973, imposed Provisional Constitutional Order 2007, and removed more than (50) Judges of Hon’ble Supreme Court, Sindh High Court and Peshawar High Court by violating the Constitution 1973 and the rule laid down by the Hon’ble Supreme Court in the case of Zafar Ali Shah (PLD 2000 SC 869).

4. That it is the considered view of the entire legal fraternity including Pakistan Bar Council, Supreme Court Bar Association and the Sindh High Court Bar Association that Justice Iftikhar Mohammad Chaudhry is the Chief Justice of Pakistan and Justice Sabihuddin Ahmed is still Chief Justice of Sindh High



**Court alongwith all those Judges who declined to take oath under the PCO, 2007.**

5. That the Full Bench constituted earlier had heard at length both the amicus curie namely Mr. Khalid Anwar, senior advocate and Mr. Qazi Faiz Issa, Mr. Raja Qureshi, counsel for Sindh Police (now on general adjournment till 1-2-2008), Mr. Abdul Qadir Halepota, counsel for Mr. Kamal Shah, Federal Interior Secretary, Mr. Masood A. Noorani, Additional Advocate General Sindh and many other lawyers.

6. It is submitted that one of the learned amicus curie Mr. Qazi Faez Issa, during his submissions had raised several questions regarding law and order situation, obstructions placed on public roads and performance of Law Enforcement Agencies in Karachi on 12<sup>th</sup> May 2007. On 8<sup>th</sup> August, 2007 the Hon'ble Full Bench of Sindh High Court was pleased to observe. "In our opinion this Questionnaire is most relevant in order to arrive at the truth of the matter, which forms the subject matter of this petition...." In addition, following five points were also framed:-

- a).....
- b).....
- c).....
- d).....
- e).....

**Thus the objections, if any, to the suo moto jurisdiction were impliedly over ruled by the earlier Hon'ble Full Bench.**

7. In view of the facts brought on record and in view of the fact that several advocates also filed their respective affidavits disclosing the acts of criminal negligence on the part of Law Enforcement Agencies & Sindh Government and their other acts paralyzing the entire working of the Sindh High Court on 12<sup>th</sup> May 2007. The said Full Bench was legally competent to initiate suo moto proceedings which had the support of legal fraternity and the civil society. "Let justice be done, though the heavens should fall."

8. Be that as it may, since Sindh High Court Bar Association and the entire legal fraternity is of the view that the Hon'ble Judges as mentioned in para-1 of this statement are still Judges of the High Court and their so-called removal is illegal, unconstitutional as well as malafide therefore, it is the earlier constituted Full Bench which is competent to hear and adjudicate on suo moto proceedings initiated earlier and the contempt proceedings pending against former Chief Minister and other government functionaries.

On 22-1-2008, the Managing Committee of the Sindh High Court Bar Association has authorized me to file this statement in writing."



Karachi.  
Dated:25-1-2008.

(RASHEED A. RIZVI)  
PRESIDENT  
SINDH HIGH COURT  
BAR ASSOCIATION

20. These statements seem particularly relevant in the light of the later case of **Sindh High Court Bar Association V Federation of Pakistan** (PLD 2009 SC 879) where it was held that those judges who did not take the PCO (including the 7 member Bench originally hearing this case) never ceased to be judges of this court and as such there was no break in their judicial service and as such should have continued hearing this case being sitting judges of this court who the case had been assigned to. Although in the **Sindh High Court Bar Association case** (Supra) in the same breath it protected all decisions made by the courts from 03-11-2007 until the **Sindh High Court Bar Association case** (Supra) on the principles laid down in **Malik Asad Ali's case** (PLD 1998 SC 161)

21. By Judgment dated 04-02-2008 the newly constituted 5 member Bench declined to entertain the matter further largely it appears on the grounds that the court was not an investigative agency and as such could not make such a factual inquiry as to the events on 12<sup>th</sup> May 2007 and as such CP.D 1125/2007 stood disposed of along with the various contempt petitions which had been filed against those who had breached the order whereby this court had directed both the Federal and provincial Governments to provide full proof security to then CJP during his visit to Karachi through a route of his choice.

22. A second CP.D 1144/2007 had also been filed by Syed Iqbal Kazmi in person which related in detail the ugly events which took place in Karachi on 12<sup>th</sup> May 2007. His Prayer reads as under;

"A). It is prayed to the Honourable Court that the Honourable Court may appoint any Judge of High Court of Sindh **for high level enquiry in the larger interest**, register case against responsible persons, give exemplary punishment those who violated the constitution and law, and order may also be passed for removal of them from their posts.

B). It is also prayed to the Honourable Court that we have apprehension that in this constitutional petition specifically whatever have honestly been mentioned in interest of one and half Crore public of Karachi that whatever truthful points have been mentioned therein, due to which they have to face reaction from Sindh, administration of Karachi, intelligence institution and administration of ruling party. We believe that whatever truthiness with poor people and on filing application in High Court for redressal of public interest, the ruling party and its supporters will detain us whole life. They can finish lives of us and our families and also can be tried to stop us from



appearance of High Court. The petitioners are bringing on record of the Honourable Court that if they victimized of revenge, false cases lodged against them, they and their families caused losses then their direct responsibility would be against above mentioned respondents."

23. It appears that this petition is still alive and has not been disposed of and that the petitioner, it appears from the record who boldly and quite bravely filed this petition in person, did face much harassment and hardship for his public spirited action which led to F.I.R.'s being filed against him and his imprisonment for some time.

24. At the outset all the learned counsel and amicus curiae requested that a larger bench be formed as the 5 member bench Judgment seemed to be a hurdle in the way of this two member bench proceeding with this matter. Accordingly at the request of all learned counsel a note was put up to the Hon'ble Chief Justice whether a larger bench should be formed to hear this matter however the Hon'ble Chief Justice referred the matter back to this Divisional Bench for hearing.

25. The Additional Attorney General submitted that the 5 member Bench judgment of this court in CPD 1125/2007 could not be over ridden, examined or interfered with by a two member bench of this court; that the said judgment was not per incuriam and since it had attained finality it could not be appealed. He was however of the view that CPD 1144/2007 calling for the establishment of a commission was still very much alive and that this court had the power to appoint a commission under either the Pakistan Commission of Inquiry Act 1956 or the West Pakistan Tribunal of Inquiries Ordinance 1969 to inquire into very specific terms of reference (TOR's) or direct the Government of Sindh to consider if deemed necessary appointing a Tribunal for the purpose of making an inquiry into the matters arising out of the incidents which took place on 12<sup>th</sup> May 2007 which he recommended should be restricted to the inquiring into the loss of evidence and other documents which had been placed before this court. In this respect he placed reliance on **Malik Muzaffar Khan v. Government of the Punjab and 2 others** (1980 SCMR 121) and **Syed Saleemul Haq v. Pakistan through Secretary, Ministry of Interior, Islamabad and 2 others** (PLD 1990 Karachi 439).

26. Learned amicus curiae Faisal Siddiqui similarly was of the view that a two member bench could not revisit a judgment by a 5 member bench of this court; that the 5 member bench judgment was not per incuriam and that it was protected by the decision of the Supreme Court in the **Sindh High Court Bar Association**



case (PLD 2009 879). With regard to whether this court could restrict itself to looking into the denial of access to justice and command and control aspects of the 12<sup>th</sup> May 2007 incident since this matter had not been alluded to in particular by the 5 member Judgment he was of the view that this matter was before the 5 member bench but it chose not to address the issue and as such it was hit by the doctrine of constructive re judicate. He also was of the view that since CPD 1144/2007 calling for the establishment of a commission was still very much alive and that this court had the power to appoint a commission but restricted to the issues raised by the Adl AGP as mentioned above and in this respect pointed to Article 199 (1) © of the Constitution which enabled this court to direct the GOS to establish such an inquiry commission although he submitted that this bench could not nominate a sitting judge as prayed but rather this issue could be dealt with by the GOS by requesting the Chief Justice of this Court to nominate either a sitting or retired Judge of this court. **When asked whether this court could refer the matter to the Supreme Court to consider taking action under A.184 (3) if this courts hands were tied he was of the view that this was possible as it involved a matter of public interest and fundamental rights in terms of access to justice and since vide the Supreme Court's order dated 12-05-2018 reports of hearings of this case had to be placed before the registrar of the Supreme Court then this aspect would come to the attention of the Chief Justice of Pakistan and his Lordship could take action under S.184(3) if he deemed fit or even establish a commission once judgment was announced by this bench.** In support of his arguments learned amicus referred to the following authorities: **Dr.Imran Khattak V Ms Sofia Waqar Khattack (2014 SCMR 122), Dossani Travels Pvt. Ltd. v. Travels Shop Pvt. Ltd. (PLD 2014 SC 1), Mst Amina Begum V Mehar Ghulam Dastgir (PLD 1978 SC 220), Ahmed Nawaz Khan V Muhammed Jaffar Khan (2010 SCMR 984), All Pakistan Textile Mills Association V Federation of Pakistan (PLD 2009 Lahore 494), Syed Mansoor Ali Shah V Government of Punjab (PLD 2007 Lahore 403), Fazal Hussain V Chief Commissioner, Islamabad (PLD 2013 Islamabad 18), Human Rights Commission of Pakistan V Government of Pakistan (PLD 2009 SC 507), Karamat Ali V Federation of Pakistan (PLD 2018 Sindh 10), Watan Party V Federation of Pakistan (PLD 2012 SC 292), Pakistan Bar Council V Federal Government (PLD 2007 SC 394), Cutting of Trees for Canal Widening Project, Lahore: In the matter of (2011 SCMR 1743), Akmal Saleemi V Federal Government (2013 SCMR 103), Shehla Zia V WAPDA (PLD 1994 SC**



693), **Marvi Memon V Federation of Pakistan AND Human Rights Case No.69622-S of 2010** (PLD 2011 SC 854), **Jai Kaur and Ors V Sher Singh and others** (AIR 1960 SC 1118), **Philip Jeyasingh V The Joint Registrar** (1992) 2 MLJ 309) and **Kamalammal And Ors. V Venkatalakshmi Ammal And Anr** (AIR 1965 1349).

27. Learned amicus curiae Shahab Sarki submitted that some action needed to be taken concerning such a serious incident in order to bolster the public's faith in the judiciary's commitment to access to justice. He also was of the view that this bench could not go behind the 5 member bench judgment which was not per incuriam although there was the outside chance of it being appealed if a case for condonation of delay could be made out.

28. Mr. Rashid Rizvi was of the view that the 5 member bench judgment was per incuriam and as such this bench could take up the matter for hearing or it could also form a commission. In this respect he relied on the case of the **Sindh High Court Bar Association** (Supra) which in effect had set at naught the case of **Tika Iqbal Mohammed Khan V General Pervez Musharaff , Chief of Army Staff** (PLD 2008 SC 615).

29. Learned Addl. PG was of the view that the 5 member bench judgment was per incuriam but it was possible for this court to form a commission where as Addl. Advocate General fully supported the 5 member bench Judgment which according to him was not per incuriam and had reached finality. He was also of the view that this court could not appoint a commission of Inquiry to look into the events of 12<sup>th</sup> May 2007.

30. We have considered the arguments of leaned counsel, carefully reviewed the record, the factual background and considered the relevant law.

31. From a cursory review of the record before us (some of which seems to be missing from the record such as all the duly completed questionnaires of the Government functionaries) we have little doubt in concluding that the 12<sup>th</sup> May 2007 incident was one of the blackest days, if not the blackest day, in the city of Karachi, which has seen much turmoil, in respect of the legal community and the public's fundamental right to unhindered access to justice especially when the then CJP's visit had been fully scheduled and the local and provincial administration (including the police) and even the Federal Government had been taken into



confidence and had been **directed** by this court to make fool proof security arrangement for the visit of the then CJP on which ever route he choose to take.

32. The comments of the KBA in CPD 1227/2007 which are set out below underline how dire that day was in Karachi for the legal community and how access to justice was completely denied to the citizens of Karachi:

“ THE following comments are respectfully submitted on behalf of the Karachi Bar Association **regarding the siege of Courts, maltreatment and torture caused to the Lawyers on 12<sup>th</sup> May 2007**, in pursuance of the orders dated 28<sup>th</sup> May 2007 passed by this Hon'ble Court in the above matter.

1. That the 12<sup>th</sup> day of May 2007 can be said to be the darkest day for the people of Pakistan in general and for Karachities in particular when, for the first time ever extreme law lessness was seen and faced by the lawyers, judges and the public, which was at the entire mercy of a particular party. Whereas the Police and Rangers were seen completely helpless and the law of jungal was prevailing in the entire city.
2. That each and every road in the city was blocked by putting huge containers, unattended trucks, buses and tankers to make it impossible for the lawyers and judges to reach City Courts, High Court or Karachi Air Port, to well come the Hon'ble Chief Justice of Pakistan and to bring the Hon'ble Chief Justice from air Port to High Court for his address to the Karachi Lawyers.
3. That not only the hurdles and obstacles were created as aforesaid but the City Court premises as well as High Court compound were sieged by miscreants who were not allowing any body to enter into the city courts or in the High Court premises. The miscreants had surrounded the said premises, armed with deadly weapons, whereas the policemen were without any arms and the rangers were totally in-active and simple spectators of all such events.
4. On that (Blackest) day, the lawyers namely Pervez Akhtar Kiyani and Mr. Shahid were shot dead and more then 21 lawyers were seriously injured by miscreants as has been brought in the knowledge of K.B.A. while several lawyers were beaten and looted, their mobile phones and wallet were snatched and their vehicles were damaged, their black coats were torn and they were abused, humiliated, harassed and dis-graced in the city court compound, which was surrounded by the miscreants. The SHO of City Court Mr. Zahid Hussain was found in full co-operation with the Gunda Elements to whom whenever any lawyer complained about the mis-behaviour, maltreatment and high-handedness of miscreants, he took such lawyers to gundas and pointed out their faces to



them to make such complainants an easy target for the miscreants.

5. That the SHO City Court to whom Karachi Bar Association made complaint subsequently regarding the events of 12.5.2007, refused to lodge an FIR, which the K.B.A. had to get lodged by filing application U/s. 22-A Cr.P.C. but even after lodging such FIR the said S.H.O. declared the same as false, saying that "nothing had happened in the city Courts on 12.5.2007", hence FIR is false.
6. That the advocates who had gathered in the city courts were not allowed to proceed to the High Court to the lawyers over there and when they attempted to proceed towards the High Court, the miscreants opened fire with intention to kill the advocates and terrorize them and they started throwing stones and bricks and thereby injured so many of them.
7. The miscreants around the Karachi Bar Association threatened to kill the advocates by burning the building. They threw some explosive material whereby the ladies bar room was set at fire. The miscreants around the KBA building holding MQM flags, near CPLC car parking, started firing and also threatened to kill the members of KBA.
8. That teeth of one advocate Mr. Zafzaryab were broken, head of one Muhammad Hussain was broken and he got 16 stitches on it, the foot of one lady advocate namely Noor Naz Agha member of Sindh Bar Council was also broken and she was also humiliated and maltreated and two other lady lawyers were also harassed and maltreated and they had to take rescue/shelter in the house of one Bohri family to save themselves, their person and their modesty; several advocates including Muhammad Ali Abbasi Member S.B.C. were made hostages in lawyers chambers, several lawyers were made hostages in Sunny Plaza and few lawyers had reached at High Court in the evening after going through hard efforts and struggle.
9. That the KBA displayed notice on the notice board requesting the effected advocates to submit in writing their grievances, occurred to them on 12<sup>th</sup> May, 2007, in response whereof hundreds of lawyers made verbal complaints but avoided to give written complaints and affidavits due to threats extended to them by members of local political party. However, some lawyers have given their affidavits and complaints, disclosing on oath the acts and events happened to them on the said day. The affidavits and complaints are attached herewith along with these comments for perusal of this Hon'ble Court." (Relevant Affidavits are attached)

33. Like wise a Resolution passed by the Malir Bar Association dated 22-05-2007 concerning the 12<sup>th</sup> May 2007 incident again highlights the widespread and



murderous assault on the bar and the legal community and how access to justice was denied to the citizens of Karachi which reads in material part as under:

“A meeting of the members of the Executive Committee of Malir Bar Association held on 21.05.2007 under the presidency of Mr. Zahoor Hussain Mahar the president of Malir Bar Association following members of the Managing Committee attended the meeting.

1. Mr. Zahoor Hussain Mahar	President/Inchair
2. Mr. Muhammad Ashraf Samoo	Vice President
3. Mr. Abdul Naeem Memon	General Secretary
4. Mr. Imdad Haider Solangi	Joint Secretary
5. Mr. Abdul Hafeez Baloch	Treasurer
6. Mr. Rana Shahbaz Khan	Librarian
7. Mr. Mukhtiar Ali Junejo	Member M/C
8. Mr. Pir Shafiq-ur-Rehman	Member
9. Mr. Zareen Satti	Member
10. Mr. Ghulam Asghar	Member
11. Mr. Irshad Ali Shar	Member
12. Mr. Muhammad Khushhal	Member
13. Mr. Muhammad Nawaz Jat	Member
14. Mr. Syeda Ulfat Shah	Member
15. Mr. Syed Saeed ul Hassan Naqvi	Member
16. Mr. Zafar Ali Sehtio	Member
17. Mr. Bashir Ahmed Brohi	Member

Meeting started with recitation of Holy Quran recited by Mr. Pir Shafiq-ur-Rehman Advocate.

Comprehensive discussion was made upon the incident dated 12<sup>th</sup> May 2007 faced by the members of the Malir Bar Association on the occasion of the arrival of the Honourable Chief Justice of Pakistan Mr. Iftikhar Muhammad Chaudhary at Jinnah International Airport Karachi.

The facts regarding the incident dated 12<sup>th</sup> May 2007, were discussed comprehensively which are as under:-

**“On 12<sup>th</sup> May 2007, the visit of the Honourable Chief Justice of Pakistan Mr. Iftikhar Muhammad Chaudhary was scheduled to be held at Malir Bar Association for his address to the advocates. The members of the Malir Bar Association felt an obligation to receive and welcome the Honourable Chief Justice of Pakistan Mr. Iftikhar Muhammad Chaudhary at Jinnah International Airport Karachi. In pursuance of that the members of Malir Bar Association gathered within the premises of District Courts Malir, thence ward at 11:30 am on marched towards the Airport by foot. The other people from public also followed the advocates but there was distance between the Advocates and public. When the Advocates of the Malir Bar Association reached near Bhittai Rangers Headquarters at Shahra-e-Faisal at about 12:00 Noon, the fire was opened upon the Advocates with intention to commit their murder by 05, 06 armed persons present at the main gate of the Bhittai Rangers and so also 10, 15 armed persons standing near the wall of the PTCL Administration building Malir Halt Karachi. Apart from that the fire was opened from**



other buildings on are upon the Advocates with pistols, Klashnikovs, Rifles, Crackers and Hand Gurnates were thrown upon the Advocates. Resultantly many Advocates of the Malir Bar Association including Mr. Gul Muhammad Farooqi, Mr. Asadullah Memon, Mr. Riaz Hussain Lund, Mr. Amanullah Khan Yousufzai, Mr. Muhammad Yousuf But Advocate and others and one of the Advocate Mr. Parvaiz Akhtar Kiyani lost his life. Some of the Advocates including Mr. Sharafuddin Jamali, Mr. Imdad Hyder Solangi, Mr. Shahnawaz Baloch, Mr. Irshad Ali Shar and others were also illegally detained by unknown persons in Siddiq Akbar Mosque and Vice President Mr. Ashraf Samoo, Mr. Ghansham Das Dhirani, Mr. Ashraf Kubar & Mr. Saeed ur Rehman were also forcibly detained at a building near Malir Halt by unknown armed persons, many Advocates including lady Advocate Miss Ulfat Shah, Miss Uzma & juniors Miss Haseena, Miss Rehana and Miss Najma and as well as Mr. Fida Muhammad Khan Advocate, Mr. Abdul Qadeer Memon were also maltreated at the hands of unknown armed persons belonging to Terrorist group. Throughout the whole period of 05 & half hours all law enforcement agencies were unavailable and the concerned TPOs and SHOs were absent from the whole scene intentionally and deliberately by facilitating the terrorist who brutally tortured the Advocates. The police is in league with such terrorist and all the law enforcement agencies are in league with them, hence the Advocates and aggrieved persons are not in a position to get the matter reported accordingly and besides this there is no trust upon the police officials and all the law enforcement agencies working within the province of Sindh in context with the incident dated 12<sup>th</sup> May 2007. Moreover the members of the Malir Bar Association are still facing threats at the hands of the unknown persons via telephone and sometimes terrorists approach and threaten by various means at the building of District Bar Association Malir and such fear and insecurity is prevailing which has disturbed the atmosphere and there is likelihood of any danger to the Malir Bar Association and nobody is there to pay any attention towards the same.

The above said facts were comprehensively discussed by the members of the Malir Bar Association.

It has been unanimously decided that Honourable Chief Justice of Pakistan and Honourable Chief Justice High Court of Sindh may be requested through this resolution to consider the above said facts leading to the incident dated 12<sup>th</sup> May 2007 faced by the members of the Malir Bar Association and further prayer may be made to the Honourable Chief Justice Supreme Court of Pakistan and Honourable Chief Justice High Court of Sindh to hold judicial inquiry and take necessary action against the culprits according to law and so also pass necessary orders for protection to the members of Malir Bar Association and building of the Malir Bar Association.

It has been unanimously decided to declare the day of incident of 12<sup>th</sup> May 2007 as black day, for Malir Bar Association and Malir Bar Association shall observe protest on 12<sup>th</sup> May in every year.

Meeting ended with a vote from all the respective members of Managing Committee who unanimously agreed." (bold added)



34. Even the Awami National Party wanted to be joined as a party and filed an application under Order 1 Rule 10 CPC supported by sworn affidavit which shows that their party wanted to go to the airport to receive the then CJP and show solidarity with the legal community but was deliberately targeted allegedly by activists of the MQM for daring to show such solidarity whilst the police stood as helpless bystanders:

### AFFIDAVIT

I, Shahi Sayed S/o Wadan Syed, Muslim, adult, R/o B-6, Circular Street , Phase-II, DHA, Karachi, do hereby state on oath as under:-

1. That I am the President of Awami National Party Sindh and also Chairman of Pakhtoon Action Committee, and also an aggrieved party in the incident of 12<sup>th</sup> May, 2007 and as such, am fully conversant with the facts of the 12<sup>th</sup> May 2007, **as I am also one of the eye witnesses of the such incident**, therefore, I am filing this affidavit in the above said Constitution Petition.
2. That our party (Awami National Party) always believe on the rule of law, independence of judiciary and in democracy therefore our Central President Mr. Asfandiyar Wali Khan **specially directed the Province of Sindh Organization to fully participate with workers to receive / well come to the Hon'ble Chief Justice of Pakistan Iftikhar Muhammad Chaudhry at the Air Port of Karachi on 12.05.2007.**
3. That being a Provincial President of Awami National Party and Chairman of Pakistan Pakhtoon Action Committee, I have called the worker meeting and office bearer of Awami National Party and also called a separate meeting of member of Pakhtoon Action Committee and at both the forum, unanimously decided to well come the Chief Justice at Airport and brought him to the High Court and we also decided the routs of our rally's and other arrangements.
4. That we decided the routs that rally's of Sohrab Goth and rally's of Central District will come at Rashid Minhas Road to main Shahrah-e-Faisal road and will wait at Drigh Road to join the main rally from tower to Airport to Metropolitan Hotel main Shahrah-e-Faisal.
5. That the worker of Awami National Party Baldia Site and Nazimabad will proceed to Airport on via Laloo Khait we have change this route **on information received to me that the said route will be disturbed by the M.Q.M workers because that they have organize a rally / procession to go to Tibet Center, M.A Jinnah Road, Karachi.**
6. That I give a direction to my duty officer bearer and member of Pakhtoon Action Committee that Baldia, Site, Nazim Abid Zones procession / rally route be change and use the safe route of site via Shershah, Maripur Road, Tower, Nati Jati Bridge, Tower.



7. **That on 11<sup>th</sup> May 2007 I met with Home Secretary Sindh and informed him the rally routes of Awami National Party and Home Secretary expressed their satisfaction regarding the route of Awami National Party procession.**
8. **That at 11.00 A.M we gathered at the Bridge of Nati Jati and after consultation with office bearers that if any obstacles raised by law enforcement agencies no resistance will be made and stop the procession and peacefully await for the arrival of Chief Justice of Pakistan.**
9. **That main Shahrah-e-Faisal was blocked by buses / containers at different places, when I reached at Awami Markaz at 12.30 PM. I received information that M.Q.M workers opened fire on the rally of P.P.P and T.I at Drigh Road and many workers are injured and died. I stopped my rally on the main Shahrah-e-Faisal at Awami Markaz that mean time at 1.00 PM from the Baloch Colony Bridge firing was started upon my rally and in which 4 persons injured and two died.**
10. **That I contacted D.I.G Operation to help us but the D.I.G told me that he is helpless and could not do anything at the moment but I tried to send the police force at the place of incident.**
11. **That I alongwith my thousand workers were set on the road in the open sky till to 4:00 P.M but no police and rangers arrived on the spot to arrange Ambulance for injured / died persons.**
12. **That at 4.15 PM T.P.O Jamshed Town Asif Aijaz came to me and asked me to return back because the Chief Justice of Pakistan sent back to Islamabad, I told the said T.P.O that how I and my workers go back without providing security first to make the road safe that the terrorists who are firing upon the innocent peoples.**
13. **That the T.P.O replied me that the road is clear and there is no apprehension of firing and I told the T.P.O that if he personally sit on my vehicle then I will be sure that the road is clear and safe.**
14. **That I and T.P.O set in my vehicle and the procession came from the Awami Markaz back to saddar.**
15. **That when I reached alongwith T.P.O at Jinnah Center near F.T.C Building indiscrimination firing opened on my rally / procession from the main bridge and buildings and Bashir Jan Deputy Secretary General Sindh Awami National Party severely injured by this firing.**
16. **That I alongwith my workers took shelter in Jinnah Center and waited for police and rangers help / aid.**
17. **That on 12<sup>th</sup> May 2007, the Karachi city was controlled by M.Q.M terrorist and the law enforcement agencies were disappeared and whenever police / rangers appeared on duty they were only spectators and fully failed to protect the lives of innocent people by the firing of M.Q.M terrorists who were equipped with automatic weapons.**



18. That I also support my contentions as stated above through the daily newspapers the said daily newspapers have highlighted all that happened on 12<sup>th</sup> May 2007.
19. That I am ready to appear before any tribunal or before the Hon'ble High Court as and when called for recording my statement.
20. That whatever stated above is true and correct to the best of my knowledge and belief.

Deponent

35. Similar affidavits on record have been found by an Ex city Nazim and a leader of the Jamaat Islami and others who were eye witnesses to the events on 12<sup>th</sup> May 2007

36. At the outset as submitted by all counsel we do not consider it appropriate to go into the individual criminal acts which were committed on 12<sup>th</sup> May 2007 for which F.I.R.'s have been registered. These matters must be dealt with by the concerned trial court based on the evidence before it. **However we noted that when the Addl.PG provided a breakdown of what progress had been made in the FIR's concerning the 12<sup>th</sup> May 2007 incident (over 11 years ago) in which F.I.R.'s had been lodged we were not surprised to find, keeping in view the factual background narrated earlier, that little if any progress had been made in hardly any of these cases.** Out of 65 cases (80 were referred to in the 5 member bench judgment) 24 were under trial (although 19 of these were dormant), 35 had been disposed of under "A" class (untraced), one disposed off under "C" class, 4 acquittals and only one unlucky man had been convicted. **Hardly any of the big fish who were a part of the command and control structure in Karachi on 12<sup>th</sup> May 2007 had been named in any F.I.R. or was facing any kind of proceedings. In our view it is apparent that after 11 years of this incident either through inefficiency or design the investigating agencies, the prosecution department GOS and the Anti Terrorism Courts (ATC's) have miserably failed to discharge their duties in deciding these important cases for reasons best known to themselves.** Despite all the DVD's, CD's, photo's and other material available in respect of the 12<sup>th</sup> May 2007 incident it seems quite astonishing that so many cases have been disposed of in "A" class.

37. We find the way in which these 65 cases have been dealt with/investigated/prosecuted and tried completely unacceptable. We note that only **after** this bench took up this case did the police make any efforts to trace out the absconding



accused by directing that their NIC's be blocked, bank accounts frozen and gather further evidence requesting CCTV footage of this incident 11 years after the event which should have been gathered (and was readily available along with other footage from T.V channels) at the time of the incident.

38. As such we hereby **direct** that Joint Investigation Teams (**JIT's**) be established under S.19 of the Anti Terrorism Act 1997 (ATA) by the competent authority within 2 weeks of the date of this order to trace out all the persons involved in "A" class cases and make further investigations in all other cases to ensure that solid evidence is collected. The ATC's hearing these cases are directed to proceed with the same on a day to day basis and decide the same within the time frame set out in the ATA and in any event not later than 6 months after the date of this judgment. A compliance report in this respect shall be put up before this bench within two weeks of the date of this order.

39. We also **request** the Hon'ble Chief Justice of this Court to appoint a sitting judge of this court to monitor these 65 cases through monthly progress reports from the concerned trial courts who initially should give an explanation for their failure to dispose of each and every one of these 65 cases despite a passage of over 11 years and who has been responsible for such delay. By way of appointing a monitoring judge reliance is placed on the cases of **Dr.Mobashir Hasan V Federation of Pakistan** (PLD 2010 SC 265) and more recently in the Panama Papers case where the Hon'ble Supreme court after receipt of a JIT report directed that NAB to file a reference against Mr Nawaz Shariff and others and that a monitoring Judge be appointed to ensure that the case was proceeded without unwarranted delay (**Imran Khan V Muhammed Nawaz Shariff** PLD 2017 SC 692). It being re iterated that the role of the monitoring judge is confined to monitoring the progress of each case and to ensure that it is disposed of expeditiously without any undue delay.

40. It is also noted in the 5 member bench Judgment at para 18 as follows:

"Para 18. Before parting, it is expected that although the government has assured to have given compensation to the relatives of the dead, in case some are left they may approach the government, which shall expeditiously grant compensation, as promised by the government itself."

41. As such the GOS is **directed** to file a compliance report stipulating (a) who and why it paid compensation to with proof of receipt (b) on what date such compensation was paid in each case (c) how much was the amount paid to each



person (d) how this amount was calculated (e) and confirmation that there are no outstanding claims within 2 weeks of the date of this order which the registrar shall put up before this bench

42. The next issue is what do we mean by per incuriam? "Per incuriam" is defined in Blacks law dictionary as under:

**"Per incuriam, adj, (Of a judicial decision) wrongly decided, usu. because the judge or judges were ill-informed about the applicable law.**

As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some features of the decision or some step in the reasoning on which it is based is found on that account to be demonstrably wrong. This definition is not necessarily exhaustive, but cases not strictly within it which can properly be held to have been decided per incuriam, must in our judgment, consistently with the stare decisis rule which is an essential part of our law, be of the rarest occurrence. Rupert Cross & J.W. Harris, Precedent in English Law 149 (4<sup>th</sup> ed. 1991)."

43. In HRC No.40927-S of 2012 **Application by Abdul Rehman Farooq Pirzada** (PLD 2013 SC 829) which was examining the entitlement of superior court judges who had served more than two years but less than 5 years to be entitled to a pension and whilst holding a judgment of the Supreme Court which had held such entitlement after two years at Para 77 of the Judgment it was potentially suggested/hinted that certain judgments which had been passed during periods of deliberate judicial chaos even if later protected by the constitution could be held to be per incuriam in the following terms

**"77. As a corollary of above discussion, it is also imperative and significant to mention here that the judgment under challenge was passed by a learned three member Bench of this Court consisting of M/s Muhammad Nawaz Abbasi, Muhammad Qaim Jan Khan and Muhammad Farrukh Mahmood, JJ on 6-3-2008, at a time when the whole superior judiciary of the Country was in chaos, crises and disarray due to unconstitutional measures taken by the then President/ dictator General (Retired) Pervez Musharraf of Pakistan, who by hook or crook wanted to remain in power and in that perspective attempted to destroy the institutions in the Country, particularly targeted the superior judiciary, to bring them under his thumb and control. The discussion regarding this aspect of the case in the present proceedings is enough to this extent. However, in this context if any further detailed discussion is felt orderly, reference can be made to the judgment of a full Bench of this Court in the case of Sindh High Court Bar Association (supra), wherein this aspect has been extensively discussed and aptly attended to."**



44. We had considered this aspect keeping in view the factual background to the case as set out above especially the alluded to "sea change" after the 11.03.2007 emergency was imposed and the 7 member bench was replaced with a new bench consisting of 5 new judges who had taken oath under the PCO (and later superannuated before or resigned after the **Sindh High Court bar Association case** (Supra) when the judges who had not taken PCO were held never to have left judicial office) who did not even have the benefit of any amicus curiae assistance or those of the lawyers of the various bar counsel's which were parties however we considered that holding the 5 member bench Judgment per incuriam, even if a 2 member bench had the power to do so, may not be the appropriate course and may set a bad precedent and might not give effect to the true meaning of per incuriam which was also discussed thoroughly in **Farooq Pirzada's case** (Supra) at Para-94 in the following terms

**Majority view** "94. Now taking up the issue of applicability and effect of this judgment after the implementation of judgment under challenge, so as to see whether it should have prospective or retrospective applicability, **the first thing to be noted is that in our short order dated 11-4-2013 we have declared that the law enunciated in the judgment under challenge is "per incuriam"**. The fallout of such declaration is that it is a judgment without jurisdiction, thus, for all intent and purposes not to be quoted as precedent, rather liable to be ignored. A useful discussion on the concept and import of "per incuriam" finds place in the case of Sindh High Court Bar Association (supra), which reads as under:--

"(ii) MAXIM "PER INCURIAM".

37. 'Incuria' literally means "carelessness". In practice per incuriam is taken to mean per ignoratum and ignored if it is rendered in ignoratum of a statute or other binding authority.

38. What is meant by giving a decision per incuriam is giving a decision when a case or a statute has not been brought to the attention of the court and they have given the decision in ignorance or forgetfulness of the existence of that case or that statute or forgetfulness of some inconsistent statutory provision or of some authority binding on the court, so that in such cases some part of the decision or some step in the reasoning on which it was based was on that account demonstrably wrong, so that in such like cases, some part of the decision, or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. See Nirmal Jeet Kaur's case {2004 SCC 558 at 565 para 21}, Cassell and Co. Ltd.'s case (LR 1972 AC 1027 at 1107, 1113, 1131), Watson's case {AELR 1947 (2) 193 at 196, Morelle Ltd.'s case (LR 1955 QB 379 at 380), Elmer Ltd.'s case {Weekly Law Reports 1988 (3) 867 at 875 and 878}, Bristol Aeroplane Co.'s case {AELR 1944 (2) 293 at page 294} and Morelle Ltd.'s case {AELR 1955 (1) 708}.



39. The ratio of the aforesaid judgments is that once the Court has come to the conclusion that judgment was delivered per incuriam then Court is not bound to follow such decision on the well known principle that the judgment itself is without jurisdiction and per incuriam, therefore, it deserves to be over-ruled at the earliest opportunity. In such situation, it is the duty and obligation of the apex Court to rectify it. The law has to be developed gradually by the interpretation of the Constitution then it will effect the whole nation, therefore, this Court, as mentioned above, is bound to review such judgments to put the nation on the right path as it is the duty and, obligation of the Court in view of Articles 4, 5(2) read with Articles 189 and 190 of the Constitution."

AND page-994 and 995 at para-4, which reads as under:

**Minority view but in full agreement with the majority view on the meaning of per incuriam "4.** The aforestated legal position explains and highlights the true magnitude and the supremacy of this Court in regard to the dispensation of justice in the country and the enunciation and the declaration of the law by it. As the law laid down by the (apex) Court, and the order(s) passed by it, being the paramount and ultimate in nature, has to be imperatively and mandatorily followed, obeyed and adhered to by all the concerned. Reading Articles 189 and 190 conjointly, and while keeping in view the scheme of the constitution, the very purpose, the pivotal position and the status of this Court (prescribed above), it is expedient that correct law should be pronounced by the apex Court. **And pursuant to the above object and due to the venerated position of this Court, the Court is cumbered with, inviolable responsibility, and a sacred duty, to interpret, declare and enunciate the law correctly, so that it should be followed, obeyed and adhered to purposively and in letter and spirit, by all the other organs of the State (including all other Courts in Pakistan) strictly inconsonance with the true aim of the aforementioned Articles.** It may be pertinent to mention here, that any invalid enunciation of law, shall contravene and impugn the very character, and attribute(s) of this Court and such bad/wrong law shall cause drastic adverse effects on the socio-economic, political, geographical, ethnic, cultural aspects and dynamics of the nation, the society, the people at large and the State in presentee or in futuro. In the above context, reference can also be made to Article 4 of the Constitution which enshrines (inter alia) an inalienable right of every citizen to be dealt with in accordance with the law, obviously this shall mean the law that is, correctly laid down by this Court. As it is a cardinal principle of justice, that the law should be worn by the Judge in his sleeves and justice should be imparted according to the law, notwithstanding whether the parties in a lis before the Court are misdirected and misplaced in that regard. **Therefore, if any law which has been invalidly pronounced and declared by this Court, which in particular is based upon ignorance of any provisions of the Constitution, and/or is founded on gross and grave misinterpretation thereof; the provisions of the relevant law have been ignored, misread and misapplied; the law already enunciated and settled by this Court on a specific subject, has not been taken into account, all this, inter alia, shall constitute a given judgment(s) as per incuriam; and inconsistent/conflicting decision of this Court shall also fall in that category.** Such decision undoubtedly shall have grave consequences and repercussions, on the State, the persons/



citizens, the society and the public at large as stated above. Therefore, if a judgment or a decision of this Court which is found to be per incuriam (note: what is a judgment per incuriam has been dealt with by my brother i.e in majority view).....

The question, however, shall be as to how this duty should be discharged and the object of correcting the wrong law, and setting it (the law) right should be achieved. One of the obvious ways of doing so is, when a party to the lis seeks review of the wrong judgment in terms of Article 188 of the Constitution. But what, if that remedy is not availed for any reason, or even if availed by the concerned, is discarded by the Court (again by committing another wrong). Whether thereafter, such a wrong decision on the point of law, cannot be remedied and interfered with, revisited or set aside at all or in other words, even if a judgment which is patently per incuriam, infinitely should be left outstanding, allowing it to become the liability of this Court and our legal/judicial system, for all future times. And the (this) Court and the system should be fettered by it, and held as a captive thereto, leaving it intact to pervade and permeate serious prejudice in perpetuity to the persons/ citizens of the country and even the State, compelling them, to be dealt with by a wrong/invalid law, despite it having come to the notice of the Court, through any means whatsoever, that such decision suffers from patent and gross vice, and it is vividly a judgment per incuriam by all references. **The answer is "No". In my candid view the approach to leave such a decision to stay intact shall be ludicrous and shall lead to drastic effects as indicated above. Rather in such a situation this Court, having special position in our judicature (judicial system as highlighted above) shall have the inherent, intrinsic and inbred power (jurisdiction) vested in it, (a) to declare a judgment per incuriam; (b) decline to follow the same as a valid precedent, (c) and/or to set it aside. For the exercise of jurisdiction in that regard and for the discharge of the duty as mentioned earlier, it is absolutely irrelevant and immaterial vide (via) which source it (decision) has come to the notice of the Court. The Court once attaining the knowledge of such a blemished and flawed decision has the sole privilege, to examine the same and to decide about its fate, whether it is per incuriam or otherwise.** In this context, it may be mentioned, for example, if while hearing some case, it is brought to the attention of the Court by the member(s) of the Bar; or during the hearing of any matter, the Court itself finds an earlier judgment to be per incuriam; or if a Judge (Judge of this Court) in the course of his study or research, comes across any judgment which in his view is per incuriam or if any information through the Registrar of the Court is passed on to the honourable Chief Justice of the Court or to any other Judge (of this Court), by any member of the Bar, or the member of the civil society (any organization/group of the society) that a judgment is per incuriam (note: without the informant having any right or locus standi of hearing or the audience, until the matter is set out for hearing in the Court and the Court deems it proper to hear him), the Court in exercise of its inherent suo motu power and the duty mentioned above (emphasis supplied) shall have the due authority and the empowerment to examine such a judgment, in order to ascertain and adjudge if the law laid down therein is incorrect or otherwise. And if the judgment is found to be per incuriam, it shall be dealt with accordingly. In such a situation (as earlier stated) it shall not be of much significance, as to who has brought the vice of the judgment to the notice of the Court or



through which channel it has reached there. **Rather, the pivotal aspect, the object, the concern and the anxiety of this Court should be to examine the judgment and if it is per incuriam to set the law right with considerable urgency**".

45. With regard to the 5 member bench judgment although we have misgivings about the same especially in the light of the facts of the case as narrated earlier in this judgment whereby a virtual sea change in hearing the case occurred once emergency was imposed on 03-11-2007 we are however of the view that a two member bench cannot interfere with a 5 member bench decision which has attained finality. In our view the aforesaid judgment also prima facie does **not on balance**, fall within the definition of per incuriam as it appears that the judges were aware of the relevant law although it is doubtful that they were properly assisted. This is because they had no assistance from the appointed amicus curiae or advocate of any bar association which had been previously vigorously assisting the court or any other party who advanced arguments in favour of the Court passing an order on merit and the arguments which the 5 member bench heard were purely one sided i.e by the GOS which had no interest in the incident being properly inquired into so that responsibility, if any, could be fixed on the higher echelons who were in fact instructing the advocate general and can even be said to have a conflict of interest in the matter as it was in their best interests to shield members of the provincial Government and others who may have had some responsibility for the events which unfolded on 12<sup>th</sup> May 2007. As such we do not consider the judgment to be per incuriam even if it is protected by the **Sindh High Court Bar Association case** (Supra). Even though it may be preferable in the public interest based on the background to the case as alluded to above to set aside the judgment and continue hearing the case we consider that our hands are tied since we must follow the law and the constitution which is well settled. Namely that a two member bench of this court cannot set aside a judgment passed by a larger bench of this court. In this respect reliance is placed on the case of **All Pakistan newspapers Society v Federation of Pakistan** (PLD 2004 SC 600) and even otherwise the judgment is not prima facie per incuriam as defined in the **Farooq Pirzada's case** (Supra).

46. No appeal was filed against the 5 member bench judgment even **after** emergency had been lifted or after the Judgment in the **Sindh High Court Bar Association case** (Supra) which as such appears to have reached finality.



47. That said we do not consider that a matter of such public importance and effecting the fundamental rights of the citizens access to justice and prima facie as appears from the record the intimidation of the legal community of Karachi by miscreants should simply be swept under the carpet on account of this 5 member bench judgment which in effect rules that it was not the role of the courts to act as an investigator. Even a brief review of the record and the Replication of the SHCBA reveals that there are considerable contradictions in the material which was placed on record by Government functionaries, LEA's, Bar counsels and other material on record which was not considered in the 5 member bench judgment which required a detailed inquiry, likewise we have not seen on record the answers to the questionnaires and additional questions raised by this court, which should have been considered in order to reach a true picture of the events which transpired shortly before and during the 12<sup>th</sup> May 2007 incident but instead note that the 5 member bench simply accepted the affidavits of the government functionaries and police without considering the contrary affidavits/statements and other material on record.

48. We have little doubt in our mind based on the material on record that the former 7 member bench was intending to consider all such material having heard the parties and amicus curiae and pass a detailed and comprehensive judgment on who, if any one, was responsible for denying the citizens their right of access to justice and preventing the lawlessness which prevailed on 12<sup>th</sup> May 2007 which prevented the then CJP from reaching the High court.

49. As we will come to below, there is sufficient **Pakistani authority** to show that a High Court itself can set up a commission of Inquiry or direct the same to be established under A.199 (1) © of the Pakistani constitution or under its inherent powers.

50. The public must have confidence that their fundamental right to access to justice must be maintained under all circumstances no matter what event occurs let alone have it prima facie deliberately impeded and no genuine steps taken by the GOS to prevent it from being so impeded or even be a part of impeding such right. It was allegedly once said that during the height of World War II when Britain was being subjected to frequent air raids by German bombers that the then Prime Minister Sir Winston Churchill queried whether the courts were open and functioning and when he was informed that this was the case he expressed his satisfaction that all was well on the governance front in terms of the rule of the,



law. It must not be forgotten that once the public have no access to justice the rule of the jungle may replace the rule of law (which appears to have happened during the 12<sup>th</sup> May 2007 incident in Karachi) which must never happen in a civilized democratic society such as ours which is governed by a constitution based on Islamic principles and Parliamentary democracy and places the independence of the judiciary at the fore front as part of its basic structure to act as a check and balance on the executive (the High Courts at the provincial level and the Supreme Court both at the provincial and Federal level) within the doctrine of the trichotomy of powers.

51. It may be that these events transpired 11 years ago however in our view this is no reason not to at least attempt to try to uncover the truth behind the 12<sup>th</sup> May 2007 incident which the public have a right to know. In recent times Mr. Nawaz Sharif was convicted of an offense under the National Accountability Ordinance 1999 going back some 20 years. In Cambodia those involved in committing the worst atrocities during the Khymer Rouge Regime under Polpot in the 1970's are still being brought to justice to day. In Britain after a period of almost 30 years those who failed in their duties (including senior police officers) in the tragic Hillsborough football stadium incident at Sheffield following a massive police cover up surrounding the events of that day where nearly 100 football supporters lost there lives by being crushed to death largely due to criminal negligence in crowd control have finally been brought to court to face justice.

52. Thus, with regard to the 12<sup>th</sup> May 2007 incident the public has a right to know whether some persons at the helm of affairs in Sindh (in breach of this court's orders) had deliberately put in place a plan to ensure that the then CJP was not allowed to leave Karachi airport and reach Malir District Courts, the City courts and the Sindh High Court and to be received by lawyers and whether the blockades were set up to protect the then CJP during his visit to Karachi or were established with the primary objective of preventing him from carrying out his schedule at the courts and other places in Karachi which lead to both the break down in law and order and access to justice being denied to the people of Karachi. The public has a right to know the command and control structure on and immediately before the 12<sup>th</sup> May 2007 visit for the then CJP, who made the security plans, who made the decisions, who gave the relevant orders, why the police and the rangers were virtual spectators whilst the city was overrun by miscreants and complete access to justice was denied to the public and with the



legal community being particularly targeted (perhaps for daring to show solidarity with the then non functional CJP), what role, if any, the Federal Government played in the planning or unfolding of the incident, what was the role of the coalition Government in Sindh and was it in league with the Federal Government of which it was a coalition partner at the Centre, was it in fact (as appears from the record) the activists of the MQM or any other political party or group who largely terrorized the public and especially the lawyers on that day, if so, who planned and ordered it or was it a coincidental spontaneous reaction, who gave permission for rival political parties to carry out rallies on the day the then CJP was due to visit Karachi and why were such permissions not cancelled in light of the anticipated law and order situation and what preventive measures were taken in this respect. The object being to fix responsibility, if any, on those at the helm of affairs at that time who failed in their constitutional and legal duties of ensuring the protection of life and property of the citizens of Karachi as well as denying them access to justice and so many other fundamental rights with a view to ensuring that such a situation never arises again and that such persons should never again be entrusted with high office and whether any of them are responsible for negligence, criminal negligence or any other offense under the PPC. Prima facie it would appear from the record that most political parties in Karachi were holding a rally in solidarity with the then CJP and the legal community bar the MQM who were holding a rally in support of President General Pervez Musharaff to tie in with a rally in his support in Islamabad on the same day and presumably his decision to file a reference against the then CJP before the SJC and declare him as non functional. Whether there is any truth in this needs to be discovered.

53. To find answers to these and other inter related questions is owed to the public and those who lost their lives on that fateful day. **It is also owed to those whom a finger of suspicion has been pointed who should be given a fair chance to clear their position.** The truth must come out and the time has come to reconcile with the past through such an exercise. It would be hoped that since the passage of 11 years and a change in the environment in Karachi those who had knowledge of the incident at a higher level would now be prepared to come forward and reveal the true events leading to and on that fateful date.

54. Interestingly we have gleaned from the record what appear to be propositions by the other learned amicus curiae before the 7 member bench which read as under:



1. Institutional independence of the police is a new concept i.e. not bound to obey unlawful order.
    - a. Police an integral part of the Government but how their independence is to be exercised.
  2. Right to free speech is a fundamental right which cannot be curbed by saying that politics is being mixed with judiciary.
  3. **Judicial function is the essence of any civilization i.e. to dispense justice---hence where this is prevented---then responsibility is to be fixed.**
  4. **Right to access to justice though not specifically mentioned in the Constitution, but yet a fundamental right if all these are read together.** (bold added)
55. Initially we had considered that the issues raised in this order concerning the 12<sup>th</sup> May 2007 incident could be better and more appropriately dealt with by the Hon'ble Supreme Court which has far wider powers than this court under A.184 (3) which have been held to be inquisitorial in nature through a plethora of its own decisions and A.187 of the constitution (indeed in our view the 12<sup>th</sup> May 2007 incident is crying out for the exercise of such powers) which are set out below for ease of reference. In terms of a comparison of powers under A.199 (High Court) and A.184(3) and A.187 (Supreme Court) of the constitution and the greater and wider powers which the supreme court benefits from/enjoys the case of **Dossani Travels (Pvt) Limited** (Supra) may be referred to:

**"184. Original jurisdiction of Supreme Court.** – (1) The Supreme Court shall, to the exclusion of every other court, have original jurisdiction in any dispute between any two or more Governments.

*Explanation.* – In this clause, "Governments" means the Federal Government and the Provincial Governments.

(2) In the exercise of the jurisdiction conferred on it by clause (1), the Supreme Court shall pronounce declaratory judgments only.

(3) **Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article."** (bold added)

**187. Issue and execution of processes of Supreme Court.** – (1) 4[Subject to clause (2) of Article 175, the] **Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it,**



including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province.

(3) If a question arises as to which High Court shall give effect to a direction, order or decree of the Supreme Court, the decision of the Supreme Court on the question shall be final.”(bold added)

56. The Hon’ble Supreme Court may have even in its wisdom, if it deemed it appropriate, have decided to appoint a Commission of Inquiry with specific terms of reference as it did in the MemoGate case (**Watan Party V Federation of Pakistan** PLD 2012 SC 292), Matter concerning the killing of innocents at Lal Masjid (**Dr.Akmal Saleemi V Federal Government** 2013 SCMR 113), in the delay in commissioning the Nandipur power project and more recently the appointment of the Water commission in Sindh.

57. However, by in effect leaving this case open to the Supreme Court as to whether it was inclined to exercise its suo moto powers we consider that we would be shirking our responsibilities and simply passing on the buck. This is because we are of the considered view that this court **does have the power to appoint or direct the Government of Sindh to appoint a commission of Inquiry to inquire into the 12<sup>th</sup> May 2007 incident whether by use of its inherent powers or under A.199 (1)© of the Constitution** especially as CP.D 1144/2007 and its prayer clause remain in tact and the particular facts and circumstances of this case as discussed above, which relief can be moulded by this court to ensure justice to the citizens and the enforcement of fundamental rights of the citizens, is of public importance and it is of paramount importance that the people know who, if any one, was responsible for the lapses which led to the denial of access to justice to the citizens of Karachi on 12<sup>th</sup> May 2007.

58. We do not agree with the contention of learned counsel that the Commission of Inquiry should be restricted to inquiring into the loss of evidence, documents and the record of this court. **The 5 member bench in its judgment itself conceded that it was not an investigator and as such could not look deeply into the issues which the 7 member bench was looking into and indeed did not address them** based on all the documents on record and as such these issues still remain to be fairly, properly and independently inquired into and



responsibility fixed on those responsible for any lapses on 12<sup>th</sup> May 2007 before or during the Karachi incident. To simply follow up on a few small fish in 65 F.I.R.'s which seem to be going nowhere does not in our view get to the heart/root of the issue. Namely, **whether those at the helm of affairs** who had command and control responsibility on and before 12<sup>th</sup> May 2007 bear any responsibility for the incident which led to a denial of access to justice, a complete break down in law and order in the country's commercial hub, cost many precious lives, injured many others, caused millions of rupees damage to both private and public property and led to an attack on the independence of the media

59. In respect of moulding relief it was held as under in **Mst. Amina Begums case** (Supra) at P.226

"Indeed in our considered opinion a discretion is vested in this behalf in the Courts to be judicially exercised in proper cases in order to avoid multiplicity of proceedings, to shorten litigation, **and to do complete justice between the parties and mould the relief according to the altered circumstances in the larger interest of justice.**"(bold added) (in the 12<sup>th</sup> May 2007 case prior to the 5 member bench judgment as discussed circumstances were certainly altered)

60. In **All Pakistan Textile Mills Association case** (Supra) at P.499 it was held as under:

"**There can be no cavil with the rule that a Court seized of a matter, which is competent and maintainable before it, can always mould the relief as is warranted by the facts of the case, even taking into account the subsequent development occurring during the pendency of the lis;** besides, the judgments cited by the appellant's counsel, reference in this behalf can also be made to *Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others* PLD 1975 SC 244."(bold added) (in the 12<sup>th</sup> May 2007 case prior to the 5 member bench judgment as discussed circumstances were certainly altered)

61. Likewise in the case of **Ahmed Nawaz Khan** (Supra) at P.988 it was held as under:

"It is settled law that courts have power to grant an effective or ancillary relief **even if not prayed for.**" (as in our view would be appropriate in respect of the 12<sup>th</sup> May incident)

62. It is also not the first time that a High Court has established a Commission. For instance in **Syed Mansoor Ali Shah's case** (Supra) the Lahore High Court established a commission to inquire into the high levels of air pollution and smog, mostly due to motor vehicles emissions in the following terms at P.406



“4. The respondents in their written reply and parawise comments admitted the facts narrated in the petitions. It was, however, stated that they are making all efforts to cure air pollution. **My learned brother Mr. Muhammad Sair Ali, J., during the course of proceedings on 24-1-2003 constituted Lahore Clean Air Commission (shall now be referred as Commission) comprising of:-**

- (1) Dr. Parvez Hassan, Advocate, Chairman.
- (2) Advocate General, Punjab, Co-Chairman/Member.
- (3) Syed Mansoor Ali Shah, Advocate/Petitioner/Facilitator and Coordinator.
- (4) District Coordination Officer (DCO), Lahore.
- (5) Deputy Attorney-General of Pakistan.
- (6) Naib District Nazim, Lahore.
- (7) Director General Environment Protection Department, Lahore.
- (8) Hammad Naqi, Director (Environment Pollution Unit), World Wide Fund for Nature (WWF), Lahore.
- (9) Chief (Transport) Planning and Development Department, Lahore.
- (10) Muhammad Nazim, Associate Professor, Institute of Management and Technology (ILM), Lahore.
- (11) Deputy Inspector General, Traffic Police, Lahore.
- (12) Erum Aftab, Environmental Scientist and Member, Pakistan Environmental Lawyer Association (PELA).
- (13) Osama Siddique (Advocate), Minto and Mirza (Advocates) (now Head of Department, School of Law and Policy, LUMS, Lahore).
- (14) Anjum Jawaid Khan, Member APCEL, Environmental Lawyer, Lahore.
- (15) Nihal Asghar, SEAL, Lahore (Co-opted).
- (16) Saigols Qingqi Motors Ltd. (through Mr. Li Shu) (Joint representative of Dawood Yamaha Ltd. Suzuki Motorcycles Pakistan Ltd. and Saigols Qingqi Motors Ltd. (Co-opted).

5. The Commission was assigned the task to study and analyze, the increasing problem of vehicular air pollution and formulate a solution. The Commission started its function, on the following term of reference:-

“To submit a report on feasible and practical solutions and measures for monitoring, controlling and improving the vehicular air pollution in the city of Lahore.”



63. **Likewise in Fazal Hussain's case** (Supra) the Islamabad High Court established a Commission to look into the question of corruption in the CDA at P.24 in the following terms;

7. This court at this stage refrains from giving any observation on the above noted issues **and proposes to constitute a commission to look into the issues highlighted above and examine as to whether legal formalities coupled with organics of transparency and fair play were adhered to or not? And if answer is in negative to indicate who are the persons responsible for this departure and causing loss to the country.** It has to be determined that loss caused is to the tune of how much amount and what were gains obtained by the officials. The learned commission shall also give its recommendations with regard to enforcing "RULES CULTURE" in the civic body of the Capital.

8. Learned Legal Advisor of CDA, Mr. Muhammad Ramzan Chaudhry agreed that affairs of CDA do call for the examination by a commission enabling this court to pass final order on the issues regarding irregularities are leveled. **This court through office sought assent of Mr. Justice @ Sardar Muhammad Raza Khan, Judge Supreme Court of Pakistan to act as Chairman of commission, who very graciously showed his willingness.**

**In this view of the matter, Hon'ble Mr. Justice (R) Sardar Muhammad Raza Khan, Judge of Supreme Court is appointed as Chairman commission and M/s. Sakhi Muhammad Kahut and Baqir Ali Rana, Retired District and Sessions Judges as its members as latter have also showed readiness to render their services.**

Mr. Pervaiz-ul-Qadir Memon, Additional Registrar, of this court shall act as focal person to co-ordinate, facilitate and perform all duties as directed by the commission. The commission will start its work at Islamabad High Court, Islamabad preferably in the week commencing from 12<sup>th</sup> of Nov. 2012. A fee of Rs.3.00 million is fixed for the Chairman and Rs.1.00 million each for members, which shall be paid by the CDA within one week from here on. Mr. Pervaiz-ul-Qadir Memon is directed to establish contact with the Worthy Chairman of the commission and Hon'ble Members and through special messenger deliver copies of the order. A period of 03 months is provided to the learned commission for submitting its report along with recommendations. The Commission shall be empowered to inspect record of CDA and if find appropriate to visit certain spots for physical inspection, to summon any record and witnesses for recording of statements and to further appoint some specialist as local commission. Learned Commission shall enjoy all the powers necessary to be exercised in discharge of their functions to arrive at conclusion with regard to issues mentioned under para-6 of instant order.

9. The newly appointed Chairman, CDA is directed to ensure full co-operation and proper assistance to the learned Commission. This court is certain that report submitted by very able and learned Commission shall provide help and guidance to the top archelan of CDA to enforce Rule of Law which is the only way to achieve Good Governance".



64. Even otherwise we consider that this court has the power to direct the provincial government to establish a commission/tribunal of inquiry to inquire into certain aspects concerning the events of 12<sup>th</sup> May 2007 under A.199 (1) © of the Constitution and the inherent powers of this court:

A.199 (1) © reads as under:

“Jurisdiction of High Court (1) subject to the Constitution a High Court may, if it is satisfied that no adequate remedy is provided by law:

(a).....

(b).....

© **On the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.** (bold added)

(2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged.

65. In this connection reliance is placed on the case of **Human Rights Commission of Pakistan** (Supra) where it was held as under at P.527 on the scope of A.199 (1) © ;

“30. There also seems to be force in the contention that the Honourable High Court was not justified in dismissing petitions under Article-199 of the Constitution where enforcement of fundamental rights guaranteed inter alia under Articles 11, 14 and 15 was sought. **In the above context it needs to be kept in view that apart from the jurisdiction vested in the High Courts by virtue of clauses (a) and (b) of Article 199(1) a special jurisdiction is conferred by clause (c) [which a High Court shares with the original jurisdiction of this Court under Article 184(3)] in the following words:--**

“On the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part-II.”

31. **It needs to be explained that in matters pertaining to fundamental rights the jurisdiction of the High Court is wider than that available under clauses (a) and (b).** In this context the true meaning of the expression “enforcement of fundamental rights” needs to be ascertained. For doing so a comparison of the provisions pertaining to



fundamental rights in the Constitutions of US and Pakistan may be appropriate. For instance, the 13<sup>th</sup> Amendment to the US Constitution forbids slavery and forced labour but provides that the Congress has the power to enforce this Article through appropriate legislation. Similarly in the 14<sup>th</sup> Amendment section-1 requires that any State shall not deprive any person of life, liberty or property or equal protection of laws. Section-5 however requires that the Congress shall have the power to enforce by appropriate legislation. These provisions show that while State-action violating or ignoring provisions of the Constitution may be struck down by Courts exercising normal judicial power, the power to positively enforce the rights through appropriate sanctions could be exercised by the Congress alone. It is for this reason that the US Supreme Court was able to give effect to the 14<sup>th</sup> Amendment in respect of racial segregation in the absence of legislation, only through extending the concept of State-action to State-aided school etc.

32. On the other hand, in the scheme of our Constitution, the power to enforce fundamental rights has been conferred upon the superior Courts through Articles 199(1) (c) and 184(3). It may be seen that under Article 4 everybody has to be treated in accordance with the law and under Article-8, a law inconsistent with fundamental rights is to be treated as void. Therefore, even in the absence of clause (c) any action by a person performing functions in connection with the affairs of the Federation, a province or local authority, inconsistent with fundamental rights is to be declared without lawful authority under the clause (a) of Article 199.

33. The reach of clause (c) however is wider. It not merely enables a Court to declare an action of a State functionary inconsistent with fundamental rights to be unlawful but also enables the Courts to practically enforce such rights by issuing appropriate directives as it is evident from its language. Accordingly, this Court after having earlier held that the fundamental rights guaranteed by Article-17 included the right of a political party to contest elections as a collective entity was able to issue mandatory directives in the case of Benazir Bhutto v. Federation of Pakistan reported in (PLD 1989 SC 66) to the election authorities to amend the election rules to provide for the same under its powers to enforce fundamental rights under Article-184(3) of the Constitution. Moreover, such directives could be issued to any person including the Government. In the case of Peoples Union for Democratic Rights v. Union of India reported in (AIR 1982 SC 1473) it was held that though some of the fundamental rights imposed negative obligation on the part of the State not to encroach upon individual's liberty etc., there were others, which were positively enforceable against the whole world. We are therefore clearly of the view that the High Court has plenary powers to positively enforce fundamental rights not merely against public authorities but even private parties. Accordingly direction for positive enforcement of fundamental rights against private parties could only be given by the High Court in respect of rights guaranteed, inter alia, by Articles 11, 22 etc. which might in most cases require enforcement against such parties."

66. Likewise in the case of Karamat Ali (Supra) this court when dealing with a case largely concerning the poor performance of the Sindh police and transfer



and posting of police officers in Sindh held that it was appropriate for this court to give certain directions to ensure the enforcement of fundamental rights vis a vis the working of the police force in the province under A.199 (1) ©.

67. In our view access to justice is a fundamental right of every citizen especially now that A.10 (A) has been incorporated into the Constitution

68. We therefore **direct** the Government of Sindh to appoint a one man Tribunal of Inquiry under the West Pakistan Tribunal of Inquiries Ordinance 1969 within 14 days of the date of this Judgment to be headed by a either a sitting or former Judge of this Court whether or not he later retired from the Hon'ble Supreme Court (who shall be selected by the Chief Justice of this Court). The Government of Sindh shall make such a request to the Hon'ble Chief Justice immediately on receipt of this judgment.

69. The Tribunal shall have all the powers under the West Pakistan Tribunal of Inquiries Ordinance 1969 which shall complete its inquiry in to the terms of reference set out below within three (03) months of its notification subject to any extensions, if required, granted by this court.

70. We do not consider that this Tribunal of Inquiry will prejudice the on going individual criminal cases which arose after the 12<sup>th</sup> May 2007 incident which in any event have almost ground to a halt as discussed earlier. Even otherwise a precedent can be found in the Mir Murtaza Bhutto Tribunal of Inquiry 1997 which continued with its proceedings after the 3<sup>rd</sup> and Final FIR had been lodged in respect of the same incident which the Tribunal was in effect inquiring into and published its report which was made public prior to the conclusion of the trial. **Furthermore, if the 5 member Bench was of the view that it could not consider issues such as denial of access to justice on 12<sup>th</sup> May 2007 and fix responsibility if there was such denial of access to justice in its judgment as the court cannot act as an investigator then a Tribunal of Inquiry certainly can since its main function is that of inquiry.**

71. The GOS shall provide at its own expense the building and all necessary facilities and equipment from where the tribunal shall operate in an easily accessible area near the High Court and staff to run the tribunal and pay all its costs including those of its Head and its staff. On completion of its report the Tribunal shall submit the same to this court and **simultaneously** make it (without



redaction) public as the people have a right to information under A.19 (A) of the Constitution and this would also appear to be the appropriate course as the proceedings of the Tribunal would have been paid for out of the public's hard earned taxes. The purpose of the Report in our view would be entirely defeated if it remained hidden away gathering dust on some shelf in the Sindh Secretariat or some other place like so many other reports of other Tribunals/commissions of Inquiry.

72. The Terms of Reference of the Tribunal/Commission of Inquiry shall be as under;

- (a) To inquire into and determine whether the citizens of Karachi's access to justice in Karachi on 12 May 2007 was denied and
- (b) To inquire into and determine how and why an angry and aggressive mob were able to lay siege to the Malir District Bar, City Courts, the Sindh High Court on 12<sup>th</sup> May 2007, if indeed, this was the case despite the presence of the police and why the police failed to timely clear these miscreants and
- (c) To inquire into and determine the hierarchy of the chain of command and control at the political, bureaucratic and Law Enforcements Agencies (LEA's) especially the police and their interaction before during and immediately after the 12<sup>th</sup> May 2007 incident.
- (d) To inquire into and determine what orders were passed down the chain of command to the police as to how to re act on 12<sup>th</sup> May 2007 if any law and order situation arose as was already anticipated by the Government of Sindh and who gave such orders and who was responsible for implementing those orders and what orders were given on the day of 12<sup>th</sup> May 2007 to tackle the law and order situation and why the police was unable to tackle the law and order situation. Was such failure on their part negligence or even criminal negligence and to fix responsibility
- (e) To inquire and determine what steps were taken on the ground by the police to remove all the barricades (which seemed to include not just containers but water tankers, buses, and other vehicles placed by miscreants) surrounding the Sindh High court and other places in



Karachi which had been put in place by miscreants and to remove the miscreants and

- (f) To inquire and determine how a media out let namely AAJ which was covering the events on 12<sup>th</sup> May 2007 as they unfolded in Karachi was permitted to be fired on for such a long period of time by miscreants with out any intervention from the police and to fix responsibility on such failure
- (g) To inquire and determine whether the security arrangements put in place on 12<sup>th</sup> May 2007 were to genuinely ensure the safe journey of then Chief Justice of Pakistan from Quaid-e-Azam International Airport Karachi to his engagements in Karachi city along his proposed route of choice or were in fact an attempt to ensure that the then Chief Justice of Pakistan could not reach either the Malir District Bar, the City Courts or the High Courts as per his schedule and
- (h) To Inquire into and determine whether lawyers and those supporters of the then Chief Justice of Pakistan were targeted and if so was it by activists of any particular political party and if so what was the name of that party and who were its senior members and
- (i) To inquire and determine whether the law enforcements agencies especially the police failed to perform there duties of protecting the lives and properties of the citizens on 12<sup>th</sup> May 2007, why they failed to do so and whether through their inaction they can be said to be accomplices to the illegal activities which unfolded on 12<sup>th</sup> May 2007 and fix responsibility on their failure to do so.
- (j) To inquire and determine whether the Pakistan rangers were called by the Government of Sindh to assist them in maintaining law and order on 12<sup>th</sup> May 2007 when the Government of Sindh was aware that such a law and order situation may arise; whether their assistance was called for prior to 12<sup>th</sup> May 2007 and to determine when the assistance of the rangers was requested and if there was any delay in calling for the assistance of the rangers and who was responsible for such delay and
- (k) To Inquire and determine why the ANP's, PPP's MQM's and any other political parties permission to hold their rallies on 12<sup>th</sup> May 2007 were



not withdrawn/cancelled prior to 12<sup>th</sup> May 2007 when the Government of Sindh had before that date (fearing a law and order situation) already requested the then Chief Justice of Pakistan to cancel his 12<sup>th</sup> May 2007 engagements in Karachi and who was responsible for making such decisions and

- (l) To inquire and determine whether there was any interaction between activists of any political party and the then Government of Sindh prior to 12<sup>th</sup> May 2007 concerning the then Chief Justice of Pakistan's visit to Karachi on 12<sup>th</sup> May 2007 and if so name that/those political parties and specify what was the nature of such interaction and who was it between and
- (m) To inquire and determine whether there was any involvement /collusion of the Federal Government with the provincial government of Sindh in attempting to ensure that the then CJP could not attend to his engagements in Karachi on 12<sup>th</sup> May 2007 and if so to what extent and at what level and identify those involved.

73. The tribunal shall have access to all the High Court files and documents concerning this incident especially the above two petitions and any other CD's , DVD's and other documents which are retained by this Court including by the Nazir and/or the Registrar.

74. Before parting with this matter we would like to place on record our appreciation to all learned counsel including the amicus curiae for their valuable assistance.

#### SUMMARY

1. We hereby **direct** that fresh JIT's be established under S.19 of the Anti Terrorism Act 1997 by the competent authority within 2 weeks of the date of this order to trace out all the persons involved in "A" class cases and make further investigations in all other cases in connection with the 12<sup>th</sup> May 2007 incident in Karachi. A compliance report in this respect shall be put up before this bench within two weeks of the date of this order.

2. We also **request** that the Hon'ble Chief Justice of this Court may be pleased to appoint a sitting judge of this court to monitor these 65 cases



through monthly progress reports from the concerned trial courts who initially should give an explanation for their failure to dispose of each and every one of these 65 cases despite a passage of over 11 years and who has been responsible for such delay.

3. The Government of Sindh is **directed** to (with regard to the victims/relatives of the 12<sup>th</sup> May 2007 incident) file a compliance report stipulating (a) who it paid compensation to and why with proof of receipt (b) on what date such compensation was paid in each case (c) how much was the amount paid to each person (d) how this amount was calculated (e) and confirmation that there are no outstanding claims within 2 weeks of the date of this order which the registrar shall put up before this bench

4. That the 5 member bench Judgment dated 04-02-2008 in CP.D 1125/2007 cannot be set aside by a two member bench of this court

5. That the 5 member bench Judgment dated 04-02-2008 in CP.D 1125/2007 is prima facie not per incuriam and has attained finality

6. That CP D 1144/2007 has not been disposed of and is still alive and its prayer clause can be molded to ensure suitable relief (keeping in view the aspects of the 12<sup>th</sup> May 2007 incident not covered in CP.D 1125/2007 **where the court declined to act as an investigator into the incidents relating to 12<sup>th</sup> May 2007 in Karachi**) and especially based of the particular facts and circumstances of this case as narrated earlier in this judgment which is a matter of public importance and concerns the enforcement of fundamental rights

7. That this court has the authority and the power either on its own motion either to establish a commission of Inquiry or Tribunal of Inquiry or to direct the Government of Sindh to establish a Commission of Inquiry or Tribunal of Inquiry to inquire into and determine certain matters concerning the 12<sup>th</sup> May 2007 incident especially in so far as it concerns access to justice

8. That as per this Judgment the Government of Sindh is so **directed** to establish a Tribunal of Inquiry under the West Pakistan Tribunal of Inquiry Ordinance 1969 to inquire into and determine certain aspects which



transpired on or shortly before or shortly after the 12<sup>th</sup> May 2007 incident in accordance with the terms of reference as set out in this judgment

9. As per this Judgment the Government of Sindh is **directed** to request the Chief Justice of the Sindh High Court to appoint a person to head the Tribunal who is qualified as per this judgment.
75. The office shall provide a copy of this judgment immediately to the Chief Justice of this court for information as well as the Chief Secretary, Home Secretary, Law Secretary Government of Sindh, Prosecutor General Government of Sindh and Administrative Judge of the ATC's for information and compliance.
76. Both petitions stand disposed of in the above terms.

11/10/08