

## **Scenario 70**

### **ON NRO'S IMPLEMENTATION:**

On **25<sup>th</sup> November 2011**, the review petition in respect of National Reconciliation Ordinance of 2007 filed by the PPP regime in early 2010 was dismissed by the Supreme Court of Pakistan. The government was told in explicit terms that the decision of 16<sup>th</sup> December 2009 should be implemented in letter and spirit. The much debated question of the presidential immunity was once again answered by the apex Court when it clearly said that it did consider documents, pertaining to Swiss courts, but still dismissed the review petition.

The SC order, like the NRO's original judgment, did not talk of any immunity but fully endorsed its original ruling, asking for re-opening of all the corruption cases both within the country and abroad.

### **PPP'S OFFICIAL STANCE:**

The Government of Pakistan maintained that the cases which had been mentioned in the NRO were politically motivated and amounted to victimization. This argument failed to find any favour with the judges. Then falling on the second line of defence according to which the president's office was enjoying immunity under the constitution.

It was for the legal minds to decide the immunity question. Outside the courts the ultimate public jury remained furious over mega scandals of corruption which were more visible in times when the rulers of PPP & PML(N) both were unable to provide relief to the people. The factor went as the biggest cause of concern for Mr Zardari and his set-up.

A little back; referring to '***the News***' of **13<sup>th</sup> May 2008**, Farahnaz Ispahani, an MNA from the PPP, in her article titled 'Understanding Reconciliation', kept the view that:

*'The flip side of the argument is that Ms Bhutto "accepted a deal" to save herself and in return helped save General Musharraf. The fact being ignored in this debate relates to how the investigation, prosecution, and judicature system in Pakistan has consistently been a political exercise, susceptible to the influence of the state instead of being an independent process.*

*Some people now want Pakistan's largest political party [PPP] and its leadership to remain hostage to court proceedings even after eleven years of non-stop vendetta.*

*None of them protested when Asif Zardari was kept in prison for eight-and-a-half years, without bail and without conviction in a single case. But they express outrage over a settlement that makes it possible for the country to move forward the process of democracy and to end the politics of vengeance and vendetta.'*

On **1<sup>st</sup> December 2009**, a **live program of GEO** with video showing Wajid Shamsul Hasan carrying cartons of documents from the Swiss Solicitor's office was shown at world media channels and is still available on **Youtube**. The comments given therein were:

*'This is a clear signal to Pakistani people to wake up. Your leaders and their appointees are only there to kill, rob and disgrace you in front of the other nations. What a*

*bizarre ambassador who was appointed in last PPP (no offence plz) Government and stayed in the UK as asylum seeker (fake) for years.*

*How can he be sincere with Pakistan? Please all you who love Pakistan and want to help or come along, please join my voice....UNHCRO (United National Human Civil Rights Organization) coming soon.'*

Referring to Amanda Hodge's essay published in **'The Australian' of 10<sup>th</sup> December 2009**, a week before the SC's judgment on NRO:

*'President Asif Ali Zardari amassed a fortune of more than \$US1.57 billion during his slain wife Benazir Bhutto's time as prime minister.*

*Mr Zardari was facing charges [before the SC] of amassing assets beyond his means, including six cases of kickbacks and misuse of power, when former president Pervez Musharraf introduced controversial amnesty legislation in 2007 [NRO].*

*The cases included the alleged misuse of authority to grant concessions to shipping companies and a gold importing firm and to purchase tractors for a government-run scheme, involving hundreds of millions of rupees (millions of dollars) in public funds.*

*Mr Zardari owned properties and bank accounts in several countries, including Britain, the US and Spain, and that in 1996 he purchased a \$US 4 million, 144ha estate in Surrey, England.*

*Mr Zardari earned himself the unflattering moniker of "Mr Ten Per Cent" during his wife's time in power, because of his rumoured demands for kickbacks.'*

[During the second week of December 2009, the NAB had submitted details of Zardari's assets, worth 1.5 billion dollars before the Supreme Court. The *Dawn* quoted the NAB, as alleging that Zardari had accumulated these assets through 'illegal means' which Mr Zardari had denied.

Mr Zardari's illegal assets were confiscated by NAB, but de-frozen within days of the promulgation of the NRO in 2007. Presidential spokesman Farhatullah Babar confirmed that Zardari had taken back all his frozen assets through courts after the NRO was implemented. Some details were:

- Around \$13 million were frozen in bank accounts in Geneva; allegedly kickbacks from Swiss cargo inspection companies.
- Twenty-five bank accounts of Zardari were frozen—and Then defrozen after NRO. These included accounts in the Union Bank of Switzerland (UBS), Citibank Private Limited and Citibank, Dubai.
- Among the confiscated properties belonging to the couple, or held in *benami*, were 150 acres of land in Sanghar, Nawabshah and Hyderabad; eight acres of land at Hawksbay and one-acre plots each in Clifton and Saddar, Karachi; six sugar mills, two textile units, one cement, two chemical and one ice factories.
- 365 acres of Rockwood Estate (Surrey Palace), apartments in the posh Queens Gate Terrace and Hammersmith of London, four shops in Brussels and two apartments in Brussels. The Surrey Palace later was sold to an English property developer.]

Fascinatingly, the prime minister, his cabinet members and the PPP leaders had been claiming blanket immunity for President Zardari after 16<sup>th</sup> December 2009's decision on NRO, but this very question was not raised by federation's any counsel or President Zardari's representative lawyer or the federal law ministry even once during the hearings of the petition.

The SC's judgment did not recognize any exception or immunity while declaring the NRO void *ab initio*. In its decision [dated 16<sup>th</sup> December 2009] on the NRO, the SC did not discuss President Zardari but had ruled:

*'From the day of its (NRO) promulgation i.e. October 5, 2007, as a consequence whereof all steps taken, actions suffered, and all orders passed by whatever authority, any orders passed by the courts of law, including the orders of discharge and acquittals recorded in favour of accused persons, are also declared never to have existed in the eyes of law and resultantly of no legal effect.'*

Similarly, without talking of any immunity, the SC had ruled that **all cases** which were under investigation and which had either been withdrawn or where the investigations or enquiries had been terminated on account of the NRO of 2007 shall also stand revived and the relevant and competent authorities shall proceed in the said matters in accordance with the law.

Contrarily, the NAB under Admiral (ret'd) Fasih Bukhari, was completely satisfied with the implementation of the NRO judgment; posing complete trust in the Bureau's prosecution [*in fact behaving as a friendly prosecution*] but disowned the standing and credibility of the corruption cases framed by the Ehtesab Bureau under Saifur Rehman.

NAB also maintained that all NRO cases had already been reopened while the question of writing to the Swiss government and other foreign authorities for reopening of corruption cases abroad did not pertain to NAB but related to the Attorney General's office. In fact NAB never went into review but started implementing the NRO decision of December 2009 with all zeal and fervour.

Though the NAB argued that the question of writing to the Swiss and other foreign authorities for reopening of corruption cases against President Zardari abroad did not pertain to their domain, the officials believed that writing to the Swiss authorities for reopening of corruption cases, as was directed by the apex court, was no more required because the ground realities had changed.

Interestingly, NAB, which had spent millions of rupees from the public pot during the last 13 years, disowned the NRO cases and started questioning the evidence collected. Moreover, NAB remained with the view that:

*'Since the trial courts had acquitted all the accused here in Pakistan, some [pointing towards Benazir Bhutto] have already expired while President Zardari enjoys constitutional immunity, therefore, writing to the Swiss authorities was no more required'.*

#### **ADNAN KHWAJA & BRIG IMTIAZ'S CASES:**

At an earlier hearing, the court was informed that one Adnan Khwaja was appointed as Managing Director of the Oil & Gas Development Corporation Limited (OGDCL) on the verbal orders of PM Mr Gilani.

***'Is appointing a matriculate [an education level in Pakistan a year less than GCSE of UK] as head of the OGDCL not misuse of authority?'***

Justice Khosa had asked; adding that NAB's silence over the misuse of official authority was criminal negligence. NAB's Prosecutor General, K K Agha, had told the court that NAB had not investigated the said case.

The apex court directed NAB to investigate the appointment of Khwaja as OGDCL's head and directed the NAB Chairman to personally appear at the next hearing along with records to explain the appointment of Khwaja and Ahmad Riaz Sheikh, an FIA officer but later convicted, who was then reappointed FIA Additional Director General at a later stage.

The Supreme Court noted that Ahmed Riaz Sheikh was a convict and thus an inquiry into his reappointment was necessary. The apex court also summoned the acting law secretary who had prepared the summary of Mr Sheikh's reappointment. A little more details here.

On **21<sup>st</sup> September 2010**, the SC ordered the NAB to take into custody former spymaster Brig (ret'd) Imtiaz Ahmed and the recently appointed and removed Managing director [MD] of

OGDCL, Adnan A Khwaja, who had been in appeal against their conviction on corruption charges. Both Mr Khwaja and Brig Imtiaz were taken into custody by Islamabad Police straightaway from the courtroom and were escorted to judicial lock-up in a police vehicle already parked in the SC premises. They were required to furnish fresh surety bonds within three days as their earlier surety bonds for bail stood discharged after their acquittal under the NRO.

Additional Prosecutor General NAB Raja Aamir Abbas had informed the bench that Brig Imtiaz had undergone a part of sentence till then and he still had to undergo the remaining period prison even if he paid the fine. Rawalpindi's Accountability Court had awarded Brig Imtiaz eight years rigorous imprisonment and a fine of Rs:7 million on 31<sup>st</sup> July 2001. He was released from jail on bail by the Lahore High Court on 8<sup>th</sup> June 2002.

Adnan Khwaja was sentenced to two years rigorous imprisonment and a fine of Rs:200,000. Till then he had already served one year, one month and eight days in jail, including remissions, but 10 months and 22 days were still remaining.

After the promulgation of NRO both the accused, Brig Imtiaz & Adnan A Khwaja had claimed benefit under it. After the acquittal under NRO, Mr Khwaja was appointed Chairman of the National Vocational and Technical Education Commission (Navtec) on 2<sup>nd</sup> June 2008; was not allowed to draw any salary, but entitled to all perks & and privileges. However, when the NRO was declared unconstitutional by the Supreme Court, the acquittal earned by them stood set aside.

The court felt surprising that despite Accountability Court's decision barring him from holding any public office for 10 years, Mr Khwaja continued to perform his functions as Chairman Navtec and even after 16<sup>th</sup> December 2009's verdict.

*[**Brig Imtiaz**, an ex-ISI officer of 1980s and then the Intelligence Bureau Chief in 1990s revealed in August 2009 on electronic media that the known politician from Muzaffargarh Mr Mustafa Khar [uncle of the then PPP's Foreign Minister Hina Rabbani Khar] had once planned to blow GHQ with all the top officers in conspiracy with some officers of Pakistan Army, who had earlier been Court Martialled and thrown out of the Army.*

*Mr Khar had links with RAW, the Indian counterpart of ISI, which had supplied the weapons and Bombs to these officers after his [Mr Khar's] visits to India.*

*According to Brig Imtiaz, Mr Khar was also responsible for kicking out a serving **Army Chief Gen Gul Hassan**, an honest & the only army General who never owned a house and could not afford his personal car.*

*On 3<sup>rd</sup> March 1972 Gul Hassan was summoned to the President House along with Air Marshal Rahim Khan and made to sign his resignation. Subsequently Governor Punjab Ghulam Mustafa Khar drove him in his car with Communications Minister Ghulam Mustafa Jatoi holding a gun on his head to the Punjab Governor House.*

*Meanwhile the post of Army C in C was abolished. Dr Mobashir Hasan, the Finance Minister, brought Gen Tikka Khan in a helicopter to Rawalpindi to take over as Chief of Army Staff. Gen Gul Hassan was forced under duress to resign from the service because he was poor and Pashtun.*

*Khan's alleged involvement and his controversial approvals of military operations [as DG Military Operations] during 1971 in East Pakistan was disliked by Mr Bhutto's team then but he was cleared by Hamoodur Rahman Commission.*

*ISI's famous Midnight Jackal Operation was done under Brig Imtiaz to topple Benezir Bhutto's elected government. In his opinion, pro-Establishment Jama'at Islami and other religious po-*

*litical parties were on pay-role of the ISI to eliminate PPP for ever; so Brig Imtiaz was the one who paved the way for cronies of Gen Ziaul Haq to take over once more.]*

The apex court observed that not only did Adnan Khwaja continue the job, but was also appointed MD of OGDCL on 7<sup>th</sup> September 2010. However, the PM Secretariat and the Establishment Division rescinded the notification of his appointment when the case was taken up by the Supreme Court. In such circumstances it was an obligation of the NAB authorities to have taken the convict into custody and the properties [*restored in pursuance of the Islamabad High Court order*] should have been retrieved immediately.

[Much later; on **4<sup>th</sup> December 2012**, former PM Mr Gilani was issued a notice by the NAB to submit his stance on the matter in two weeks' time as Adnan Khawaja was known as his personal friend who had developed a close friendship with him during his days in jail about five years ago. However, Mr Gilani's counsel told the NAB on 11<sup>th</sup> December 2012 that:

*'The former PM will not appear before the NAB for statement as it is unconstitutional. All appointments were made in good faith and like any other constitutional functionary he is not answerable for his decisions made in official capacity.*

*In addition, in absence of any direct and highly convincing evidence of any wrongful gain, it would be highly irrelevant in law to furnish any reply to allegation in question. As such any allegation of illegality or impropriety in these circumstances against the prime minister is based upon misconception of law and constitution.'*

Khawaja was also said to be a close friend of Faisal Sakhi Butt, an Islamabad-based friend of President Zardari at that time.]

It was clear that the wrong-headedness and inflexibility towards the court orders had been coming straight from the high executives of the government in power. The people recalled that how the head investigator in the Hajj Scam was transferred after he summoned the son of the then PM Mr Gilani to record his statement before the FIA.

Arrest warrants of Adnan Khwaja, former illiterate Chairman of OGDC; Ahmed Riaz Sheikh, Additional DG of FIA who was once convicted by an Accountability Court but was pardoned by the President Zardari under his constitutional powers of Article 45 and one Raja Ahsan were issued while Tahir Shahbaz, Akhlaq Jillani, Razia and a number of other NRO beneficiaries were served with notices to appear before the bureau in connection with the cases pending against them. In short, except the corruption cases involving President Zardari, who enjoyed immunity under Article 148 of the Constitution, and three cases against Sharif family members pending in the Lahore High Court, rest of all the cases were re-opened.

According to the list provided by the NAB, out of total 8041 cases withdrawn under NRO some 233 NAB cases involving 248 people were withdrawn. Of these 248 people, 22 were politicians while the remaining 226 were government employees who had secured benefit of the ordinance within the initial period of 120 days.

Coming back; MNA Sherry Rehman, former FIA Director Ahmad Riaz Shaikh, Ch Tanveer, Faisal Sakhi Butt and Dr Qayyum Soomro tried to meet Brig Imtiaz and Mr Khwaja at a police station of Rawalpindi, but they were not allowed to do so. Both Brig Imtiaz Ahmad and Adnan Khwaja were shifted to Adiyala jail next day.

### **SWISS LETTER ISSUE DEEPENED:**

Let us peep into the original events of those days.

On AG Justice ® Qayyum's widely discussed letter sent to Geneva, **Stephanie Nebehay's report dated 1<sup>st</sup> April 2008** [referring to Reuters] was an eye opening treat that:

*'Pakistan has dropped out of a 60 million Swiss franc (\$59.6 million) Swiss money-laundering case against the widower of assassinated PM Benazir Bhutto. He (Mr Zardari) has been charged with aggravated money laundering by a Swiss court and the Pakistani government had joined the case as a civil party.'*

Swiss lawyers said the lack of a criminal prosecution against Mr Zardari in Pakistan and the government's withdrawal as a civil party in the Swiss case had greatly weakened the chances of convicting Zardari under Swiss law. The case against Bhutto ended with her assassination in December 2007 while campaigning in Pakistan's election. Dominique Henchoz, a lawyer for Pakistan, confirmed its withdrawal as a civil party in remarks to the **'daily Le Temps'**:

***"Just because there has been an amnesty for the good of the country doesn't mean that no crime was committed.***

*Pakistan remains a civil party in the Swiss case against a disbarred Geneva lawyer who was administrator of offshore accounts linked to the inspection kickbacks, Henchoz told the paper.*

***Benazir Bhutto, Mr Zardari and the lawyer were convicted by a Geneva court in 2003 of laundering \$13 million linked to the kickbacks.***

*But that verdict was thrown out on appeal, sparking a wider probe by an investigating judge who indicted all three on charges of aggravated money laundering.*

The case was then in the hands of Geneva's Chief Prosecutor Daniel Zappelli, who could close it or bring it to trial. Some 60 million Swiss francs remained frozen in Swiss accounts in connection with the case.

*"Pakistan has withdrawn as a civil party, which proves it does not feel that it suffered damages," Zardari's lawyer Saverio Lembo told Reuters.*

In Pakistan, for President Zardari, the Supreme Court in its judgment remarked that why a one page summary was not sent to the prime minister despite a lapse of three months in accordance with paragraph 178 of the NRO judgment.

The paragraph 178 of the judgment in NRO had said that:

*'Since the NRO 2007 stands declared void ab initio, actions taken or suffered under the said law are also non est (unconstitutional) in law, and since the communications addressed by Malik Muhammad Qayyum to various foreign authorities / courts withdrawing the requests earlier made by the Government of Pakistan for mutual legal assistance; surrendering the status of civil party; abandoning the claims to the allegedly laundered moneys lying in foreign countries, including Switzerland, have also been declared by us to be unauthorised and illegal communications and consequently of no legal effect, therefore, it is declared that the initial requests for mutual legal assistance; securing the status of civil party and the claims lodged to the allegedly laundered moneys lying in foreign countries, including Switzerland, are declared never to have been withdrawn.*

*Therefore, the Federal Government and other concerned authorities are ordered to take immediate steps to seek revival of the said requests, claims and status.'*

The 3-judge bench comprising Chief Justice Iftikhar M Chaudhry, Justice Tariq Parvez and Justice Ghulam Rabbani also summoned Federal Law Secretary Masood Chishti and ordered him to complete within three days the task of writing a summary for a fresh executive deci-

sion by the prime minister on implementing the NRO verdict that required, among other matters, reopening of Swiss cases involving President Zardari.

Needless to say, as Ayaz Amir opines [*the 'News' of 21<sup>st</sup> May 2010* is referred] that powerful should be the first to be called to account but, **for the sake of credibility, the SC was expected to exhibit judicial enthusiasm, instead of appearing to be selective, 'by travelling also a bit left and right'. The apex court wasted its time for unachievable, might not be in line with constitutional commandments**, though the aims were commendable.

The higher courts could serve the people more if, while remaining within limits; it could stick to the meaningful & enforceable decisions. The SC during Gen Musharraf's days stopped the sale of the Steel Mills. What the people got out of it; average Rs:15-20 billion more input each year but still a bigger white elephant today; negative production since the six years at glance. The SC once tried fiddling with petroleum prices, not to much avail. The Chief Justice of the Lahore High Court once tried fixing the price of sugar, with less than happy results.

Price of sentimental reacting to newspaper headlines and attracting media attention kept on travelling high on the graph. The nation struggled for the restoration of an independent but the rightful judiciary; they wanted to see it on high echelons. Most elements were pointing towards Judges' own rampant enthusiasm and the judicial activism. Lack of implementation of NRO judgment, though proved the callous & uncaring nature of the ruling executive, but also added in the frustration and anger of the higher courts.

Some of the intelligentsia kept another viewpoint that after NRO proceedings, the singled out Zardari went more stronger later than was in 2009; some grey areas went bright and the GHQ more concrete. The presidency was benefiting from circumstances, hats off to the Afghan situation; the White House, the Pentagon, the CIA and NATO never wanted Zardari out. The Americans wanted our army to remain engaged in FATA; PPP government to continue playing a supporting role; and, of course, no tension on the Pak-India border. Therefore, no one bothered about judiciary's disturbing shouts.

When the historian would glance at the larger canvas, the collision theory of Presidency vis a vis the Supreme Court would surface as a small fry of harmless events.

**On 25<sup>th</sup> May 2010** four legal brains under the lead of Federal Law Minister Babar Awan spelt out in the Supreme Court reasons for not writing letters to Switzerland to reopen the money-laundering cases against President Zardari. Attorney General [AG] Maulvi Anwaarul Haq was his nominee to advocate his opinion. Mr Awan had wholeheartedly supported Additional AG K K Agha's selection for the job by President Zardari. Irfan Qadir, the just appointed Prosecutor General of the NAB, was directed to stand by the law minister.

The government's four-member core legal line-up comprising Babar Awan, Anwaarul Haq, KK Agha and Qadir remained constantly in contact with Mr Zardari seeking fresh guidelines. Their prime task was to put hurdles in the way of implementation of the apex court's ruling on the NRO especially the revival of the cases against the president.

NAB officials said that the new prosecutor general did not approve the letters that NAB Chairman Nawid Ahsan had written to Swiss authorities for reinstatement of the graft cases against Zardari **'as the president cannot be prosecuted at home or abroad'**.

**On 12<sup>th</sup> October 2010**, a day before the hearing of the NRO implementation case in the Supreme Court, the PPP government decided to move a new petition before the judges to straightaway challenge the implementation process of the NRO judgment of 16<sup>th</sup> December 2009.

The new petition was a bid to ease the mounting pressure on PM Gilani to write a letter to the Swiss authorities against President Zardari. The president had issued fresh instructions to PPP's legal aides after he was briefed about the SC's unexpected ruling for not allowing the

government to bring a new lawyer in place of Kamal Azfar after he was notified as the prime minister's adviser on disaster management.

The government's legal team also filed another petition challenging the decision of the SC to disallow it to bring a new lawyer to defend its review petition telling about circumstances which led to the removal of Kamal Azfar. A long list of arguments was prepared by the legal team in that regard too.

The main theme of the new petition challenging the implementation of the NRO judgment was focussed to justify as to why the letter to the Swiss authorities could not be written. The sources said the PPP government has made up its mind that it will be preferable to go down fighting instead of being seen as dictated by the court and then made to go home or collapse under the burden of the NRO judgment and more. It was generally felt in government circles that:

*"PM Gilani was not ready to hand over his own president to Swiss authorities as he feared that if he wrote any letter to Swiss authorities, then it would amount to withdrawing the immunity and he would face charges of violation of Article 6, which is punishable with death penalty."*

It was also decided from the government side to ask the Supreme Court to form a larger bench to hear the review petition challenging the implementation of the NRO verdict; to gain more time obviously.

### **SC GONE HARD ON NRO's ORDER:**

At last **on 25<sup>th</sup> November 2011** the PM was specifically directed again to write to the Swiss government to withdraw that objectionable letter written by the then Attorney General Justice ® Qayyum Malik in respect of Mr Zardari's hefty accounts there.

The Supreme Court **on 3<sup>rd</sup> January 2012** issued its last warning to the government and all concerned authorities to ensure implementation of its verdict against the National Reconciliation Ordinance (NRO), warning that beyond this date, the court would not pass any more orders but take direct action.

A five-member special bench headed by Justice Asif Saeed Khan Khosa heard a case pertaining to the non-implementation of the NRO verdict. The court inquired whether a letter was written to the Swiss authorities after the dismissal of a review petition against the NRO verdict.

Attorney General (AG) Maulvi Anwaarul Haq contended before the court that the letter to the Swiss authorities could not be sent so far and was postponed due to the hearing of the NRO review petition. The apex court noted that the court did not grant any stay on the implementation of the NRO verdict during the hearing of the review petition.

During the last hearing of the NRO implementation case, the court had directed PM Mr Gilani to dispatch a new summary to Swiss authorities, the law secretary had sought more time for a new summary, but the later did not turn up despite being summoned by the apex court.

**On 10<sup>th</sup> January 2012**, the five member bench of the Supreme Court decided to place six options relating to the NRO implementation case before the Chief Justice, also requesting for constitution of a larger bench for hearing of these options. Announcing the verdict on NRO implementation case, the bench headed by Justice Asif Saeed Khosa handed over those six options to the Attorney General (AG). The options were:

1. To initiate the contempt of court proceedings against the Chief Executive and the Secretary Law for not implementing the NRO verdict.
2. To declare the Chief Executive [the Prime Minister] ineligible from the membership of the Parliament.



3. The apex court may form a commission to get the verdict implemented.
4. The people themselves decide on the issue and the apex court exhibit patience.
5. Contempt proceedings against Chairman NAB may be initiated.
6. The action may be taken against the President for violating the Constitution.

The Supreme Court declared in its order that the government has failed to implement the verdict; not taking interest to observe the order for the last two years. The apex court, *inter alia*, observed that:

- *'The president in an interview to Geo News said his government would not implement one part of NRO verdict.'*
- ***Prima Facie the prime minister is not an honest man and violated his oath.'***

The SC bench in its order asked the AG to apprise as to why any of the options might not be exercised by the Court in this matter. The apex court held that:

*'It goes without saying that any person likely to be affected by exercise of these options may appear before this Court on the next date of hearing and address this Court in the relevant regard so that he may not be able to complain in future that he had been condemned by this Court unheard.'*

In non-implementation of the NRO [and several other verdicts of higher judiciary also], the SC behaved with unlimited care; cautious not to tilt the precarious balance. The SC never wanted matters to spin out of control but the government had other things on its mind; the result was obvious.

Following the strong reprimand by the Supreme Court, the NAB enforced its action on the reopened cases after the scraping of NRO by the apex court. Soon after declaration of NRO as void *ab initio* by the court on 16<sup>th</sup> December 2009, all the cases once withdrawn were reopened by the then Chairman NAB Nawid Ahsan, but later these cases could not be pursued as the department was incapacitated by the government both in terms of manpower and finances.

In the other cases the Supreme Court was constrained to observe that the Prime Minister Yousaf Raza Gilani had misused his authority by appointing convicted people, including NRO beneficiaries Adnan Khwaja and Ahmed Riaz Sheikh. In cases dealing with the appointments of Adnan Khwaja as the MD of OGDCL and of Sh Riaz as the ADG FIA, the NAB was trying to save the key respondents and thus the country's top officials were involved in corruption.

However, Prosecutor General NAB KK Agha informed the court that no reference had been filed against Mr Gilani though, in its NRO ruling, the Supreme Court had directed NAB to take action against Mr Sheikh, Mr Khwaja and officials of the Establishment Division, Interior Ministry and FIA who were involved in the illegal contractual appointment of Khwaja and illegal reinstatement and promotion of Sh Riaz.

The NAB had argued that Adnan Khwaja remained OGDC MD only for seven days and caused no loss to the national exchequer. However, references were sent against Ismail Qureshi, former Principal Secretary to the PM, Saeed Gilani and Rang Zia, bureaucrats involved in the appointment of Adnan Khwaja.

*[Ismail Qureshi, the then Secretary to the PM had issued the notification of Adnan Khwaja's appointment as MD OGDCL on the orders of the then PM Mr Gilani so the NAB sent a reference against him on that count.*

*Later Mr Qureshi had also issued appointment of one Zain Sukhaira, friend of Abdul Qadir Gilani (son of the PM) against the rules and regulations.*

*FIA team collected all evidence related to this process; despite the fact that it was in his knowledge that Sukhaira was facing a corruption case in an Anti Corruption court. The FIA held that Ismail Qureshi misused his powers and remained involved in this case of appointment deliberately.]*

Former Federal Secretary Ismail Qureshi was arrested on 13<sup>th</sup> January 2012 by a NAB team in Lahore then shifted to Islamabad for interrogation in connection with another corruption case pending against him.

Mr Qureshi was given immediate relief by the apex court asking that how a reference could be filed against the people who followed the order but not against PM Gilani who ordered them. Justice Khosa remarked that the officials had carried out the orders of their political masters.

Justice Asif Saeed Khosa, during the hearing of the case, maintained that Malik Qayyum had misused his authority as the Attorney General. When asked whether a reference was filed against Justice (Rtd) Malik Qayyum, the NAB's Prosecutor General said that NAB wanted the inquiry against Malik Qayyum to be stopped.

*[On 4<sup>th</sup> December 2012, Waseem Sajjad, counsel for former AG Malik Qayyum told the apex court that NAB had completed inquiry against Malik Qayyum and in Executive Board's meeting the case had been discussed and closed.*

*Justice Tariq Parvez noted that the court would like to see whether the inquiry conducted by NAB was transparent or not; it would be seen in the light of Asghar Khan & Anita Turab Ali Cases.]*

In the case of transfer and reinstatement of NICL's Zafar Qureshi also, it was clear that the authority to issue notifications in both regards was the prime minister himself. In NRO also, the PM Gilani being the Chief Executive, should have taken special interest in getting the verdict implemented but he did nothing.

### **CONDI REVEALS FACTS IN 2011:**

Referring to the recent book [*'No Higher Honour': Crown; November 2011*] of the former US Secretary of State, **Condoleezza Rice**, on NRO deal; she does not seem to know how Gen Musharraf finally agreed to it. Her version was that:

Benazir Bhutto had two conditions for the said NRO deal:

- She be allowed to become the Prime Minister for the third term.
- The cases pending in courts against her and others withdrawn.

President Musharraf believed that withdrawing the cases would not be appropriate and courts alone should deal with them. However, she could become the Prime Minister if her party won enough seats in elections.

On return from Dubai [in July 2007], Gen Musharraf gave his views in a meeting with top leaders of the Muslim League [PML(Q)], including Hamid Nasir Chattha, Farooq Laghari, Sh Rashid, Ch Shujaat, and Parvaiz Ellahi.

According to Shaikh Rashid; that BB should not be allowed to become the Prime Minister for the third time because that would jeopardize the prospects for the other leaders. (Ch Parvaiz Ellahi was very insistent on this point) As for the pending cases, they did not object to their withdrawal.

Gen Musharraf was not convinced. Then Ch Shuja'at Hussain met him and succeeded in changing his mind. He opposed the third term for BB but not the withdrawal of cases. He had an ingenious argument. He argued that NRO would be obviously unconstitutional and the Supreme Court would strike it down within no time. Thus, the President could claim that he did what BB wanted but was helpless regarding unfavourable judgment of the court, if any. The argument made sense and Gen Musharraf went for the NRO.

The problem arose when the Supreme Court [of CJP Abdul Hameed Dogar] did not strike down the NRO; it merely suspended its operation. That did not solve the dilemma. NRO remained as a law until the Supreme Court [of CJP Iftikhar M Chaudhry] finally declared it unconstitutional in December 2009, long after Gen Musharraf had gone.

Had Chief Justice Hameed Dogar done the assignment complete, the cases would have been still there and Gen Musharraf would not have to face one of the greatest embarrassments of his life. Neither he nor Ch Shuja'at Hussain could tell his fellow Pakistanis later about their clever plans because it could embarrass both.

Astonishingly, regarding the NRO deal between Gen Musharraf & Benazir Bhutto, Condi admits everything and reveals how she toiled for many sleepless nights to bring the two 'moderates' together in 2007. According to her version:

***'In the beginning of 2007 Gen Musharraf had asked [the US] for help in bridging his differences with Bhutto.***

***[If the deal goes successful] It would shift the weight of politics towards the moderates and undermine the Islamists, as well as Nawaz Sharif, who ....was suspected of maintaining close ties to the militants.'***

As per details given in the book, Richard Boucher, the Assistant Secretary for South and Central Asian Affairs, became the point man for the US in exploring a deal. Shuttling back and forth between the parties — usually meeting Bhutto in London — Richard got them close enough to make a face-to-face meeting possible.

That encounter took place in the UAE in late July, but their discussion was inconclusive. By early October 2007, there were four outstanding issues:

- When would Gen Musharraf shed his military uniform (before or after the elections);
- Would Benazir Bhutto and her party colleagues be immunized in the multiple corruption cases against them (including those against her husband, Mr Zardari);
- Could she become prime minister despite a constitutional prohibition against a third term (she'd already had two terms);
- Would Gen Musharraf support her return to Pakistan before the elections?

Condi describes in her book that:

*'I put those questions to Musharraf in a phone call on Oct 3 at 4:47 pm. At 5:47 pm I got back to Bhutto with his response. At 6:18 pm I talked to Musharraf again. At 6:53 pm I called Bhutto.*

*That continued every half hour until 11:28 pm, with nine more calls back and forth. Bhutto was suspicious of Musharraf's motives and he of hers. Benazir kept saying that she had to bring her party conference along because they didn't want a deal with Musharraf.*

*I argued that she had to do it for the good of the country — only an alliance between the two of them would allow elections to take place in a stable environment.*

*I was also concerned that we might be accused of interfering in the democratic process. Why not just let the elections happen and let the chips fall where they may?*

*I went to bed at about midnight, only to be awakened at 12:41 am by Musharraf. Well, I had said he could call anytime. I called Bhutto at 4:58 am and relayed the latest offer. The next morning, I talked to each of them one more time.*

*They had a tentative deal — not firm but detailed enough that Bhutto would be permitted to return to Pakistan to stand in the parliamentary elections that would be held by mid-January.'*

As Gen Musharraf had made an announcement to take off his uniform only after being elected as President, a wave of distrust again surfaced and the whole exercise of US Secretary of State seemed to drown in doldrums but then Condi writes:

***'Bhutto had told me that she didn't trust him to follow through with his pledge. "I'm taking this as a US guarantee that he will," she'd said.'***

The deal was announced on 4<sup>th</sup> October and on 18<sup>th</sup> October 2007 Benazir Bhutto landed on Pakistani soils.

NRO was agreed upon between the two for their own mutual interests but in the name of democracy.