

**IN THE HIGH COURT OF SINDH  
AT KARACHI**

**C.P No. D-2110 of 2020**

Petitioner : Arshad Riaz Mughal Advocate, in person.

Respondent : Province of Sindh, through Mr. Jawad Dero, AAG, along with Mr. Amanullah Zardari, Focal Person, Home Department, Government of Sindh

Date of hearing : 08.04.2020.

Present : Muhammad Ali Mazhar and Yousuf Ali Sayeed, JJ

**JUDGMENT**

**YOUSUF ALI SAYEED, J -** In the wake of steps taken by the Province of Sindh to implement a ‘lockdown’ as part of an ongoing endeavor to curtail the spread of the Covid-19 virus, which has been categorized as a global pandemic, this Petition under Article 199 of the Constitution has been brought under the garb of ‘public interest’, with the relief elicited being solely that the Respondent be “directed to open the Mosques to the extent of the Jumma Prayer under precautionary measures”.

2. The grounds raised by the Petitioner are as follows:

- “1. That the verbal order of the respondent to the extent of Jumma Prayer is against the Holy Quran particularly Sura-e-Jumma which entails the Muslims as mandatory to offer the Prayer in Mosque.
2. That such order is against the Constitution of Pakistan that guaranties the religious freedom.
3. That the Banks, Super Stores, Govt. institutions and Courts are open but only Mosques have been declared out of bound for Muslims which is discrimination under Article 25 of the Constitution.”

3. As is apparent from a reading of the grounds, as reproduced, the Petition is predicated on the assumption that the measures implemented by the Respondent to curtail congregational prayers at mosques proceed on the basis of a so called 'verbal order', and that being so, the Petitioner has neither annexed nor assailed any law or notification promulgated or issued in that regard.
  
4. However, pursuant to notice issued in the matter, comments have been filed in Court today by the Focal Person of the Home Department of the Province, in addition to which the learned AAG has also filed a Statement. Appended therewith are copies of the Orders dated 26.03.2020 and 02.04.2020 issued by the Government of Sindh, through the Home Department, under Section 3(1) of the Sindh Epidemic Diseases Act 2014 (the "**2014 Act**"), whereby the restriction earlier imposed on public gatherings have been extended to places of religious worship, to the effect that only 3 to 5 designated persons such as the Pesh Imam, Moazzin and Caretaker) may form part of the congregation, whereas the members of the general public are left at liberty to offer their prayers at their respective homes.
  
5. Vide the Order of 26.03.2020, the aforementioned restriction was initially imposed by the Provincial administration up to 05.04 2020, however, in terms of the subsequent Order of 02.04.2020, has since been extended for the time being up to 14.04.2020. For the purpose of framing the matter for determination in proper perspective, it would be appropriate to examine the substantive part of that latter Order, as presently in force, which stipulates as follows:

**GOVERNMENT OF SINDH  
HOME DEPARTMENT**

Karachi, dated the 02<sup>nd</sup> April, 2020

**ORDER**

Whereas the Corona Virus spread and increase in COVID-19 cases has been seen worldwide causing devastating consequences and illness and deaths resulting from it. That social distancing measures and such precautionary measures are seen to decrease the COVID-19 cases and resulting deaths. That Government of Sindh issued orders from time to time earlier to avoid unnecessary and avoidable movement of public in order to contain the spread of disease.

That after careful consideration of the situation and the spread of disease and further deliberations in National Coordination Committee the Government is satisfied that such restrictive measures adopted are necessary to continue for some time to contain the spread of disease and break the chain of spread of virus.

Now therefore in exercise of powers under section 3(1) of Sindh Epidemic Diseases Act 2014 (The Sindh Act VIII of 2015) and in supersession of all previous orders hereby issues following directions, regulations and necessary measures to be observed and adopted by all the concerned businesses, general public etc.

**Complete Closure/Ban**

- 1) All educational institutions i.e. schools, colleges, medical colleges, technical and vocational institutes, Universities (both public and private), coaching centers, madaris (already closed till 31<sup>st</sup> May, 2020).
- 2) Shopping Malls, Cinema Halls, Marriage Halls, Banquet Halls, Marques, Lawns, clubs, hotels, halls, auditoriums, Farm Houses, Beaches, Electronic Markets, Showrooms, Boutiques, Beauty Parlors, Luxury items & Outlets etc.
- 3) Entertainment areas where public gathers including but not limited to Farm Houses, etc, Beaches like Sea View, Hawke's bay, Sandspit, Paradise Point, etc.
- 4) Religious & social congregations, ceremonies, functions, gatherings of all kind.
- 5) Gathering on Shrines, Public Visitors meeting prisoners.
- 6) Intercity and Inter-Provincial Public Passenger Transport (Goods transport of essential/permmissible items to continue).

**Restrictions on Congregational prayers**

Only 3 to 5 persons designated for mosque (like Pesh Imam, Moazzin, Care-Taker) will offer Namaz by Jammal including Juma prayer and that the General Public will offer their prayer/Namaz at their respective homes as per directions and guidance from the religious scholars (as per consideration in order No.SO(J-I)/HD/8-1(04)/2020-Corona dated 26.03.2020). Except last rites like funeral, burial etc. while adopting social distance and attending by close family members only and after informing local SHO of area.

These restrictions on such religious gathering apply in similar manner to religious places of other religions.

**Partial Ban/Opening of shops etc from 8:00 am to 5:00 pm – all activities/ movements**

- a) All shops & manufacturing units etc, including General/ Convenience/Grocery Stores, eatable food items and related manufacturers, suppliers and others in supply chain. Medical stores situated in Malls and Superstores except those Medical Stores situated within or adjacent to Hospitals/Health Facilities.
- b) Fresh milk shops may be open from 05:00 am to 08:00 pm.
- c) Pet shops opening from 12:00 pm by owner/manager & helper for only feeding of pets kept therein (no sale etc allowed)

**Note: There shall be complete ban on all public movement & activities from 12:00 pm to 03:30 pm on Friday. Which may resume from 03:30 pm till 06:30 pm (for Friday only)**

**Ban/Restriction On Movement Of People from 5:00 pm to 8:00 am**

**Ban Not applicable to**

- Person requiring emergency medical care.
- Law enforcing agencies personnel.
- Doctor, medical & relating staff providing attending emergency services.
- Technical staff attending electricity, gas, water, Sewerage related emergencies/services, cleaning municipal staff when on duty.
- Persons on good transport carrying essential goods/permitted service's related items with one helper/cleaner (no passenger allowed on goods transport)
- Newspaper sorting & distribution may start from 05:00 am.

**Restrictions on movement of persons by transport**

- Move/travel singly with over 3 feet distance between persons.
- Maximum two persons in car (one more allowed in case sick person requiring attendant).
- Staff/Labor for permissible activities on travel in Company Vehicle with clearly marked banner/displaying showing Company/ Office/Factory name such that staff/labor is seated at a distance from one another (about 1/3 of seating capacity) and adopted precautions.
- Carry ID Card/Service Card during movement to show to LEAs.

## **Essential Items/Services to operate**

### **No other Industry or service to operate except**

- **Food and related** shops/manufacturers/distributors and all related in chain like wheat & rice, pulses, bardana etc. Seeds, fertilizers, pesticide, fish, meat, vegetable/fruit, dairy, poultry, poultry feed and related activities in chain & related shops, stores, godowns, manufacturers and transport etc.
- **Agriculture and related** activities including harvesting etc and related use of Thrashers, Tractors their repairs/maintenance etc.
- **Health and related** services Hospitals, Laboratories Pharmacies, Drug Stores, Manufacturing, Packaging, transport etc i.e. all within value/supply chain items of personal hygiene like Soaps, Sanitizers & disinfectants etc.
- **Electricity, Gas, Oil, LPG, Power General (Solar, Wind, Bagasse etc)** Production General, distribution, storage where applicable and related maintenance activities.
- **Essential Municipal Services**, Water Supply (including Water Tankers, Sewerage, Solid Waste)
- **Transport of Goods & Essential Items** (Food and medicine & emergency services materials supplies).
- **Welfare Organizations** duly registered / permitted for distribution of ration / relief goods in coordination with District Administration and LEAs.
- **Public & Private telecom** / cellular companies' technical staff for maintenance with limited admin staff.
- **Call Centres, Customers support centres** with no customers including 24 hours helpline for cellular, telecom, mobile / internet banking and bill payment with minimal staff.
- **Technical Staff** of Cellular companies (for repair / maintenance of towers/cables & related services) with minimal admin staff.
- **Banks** with minimal essential staff.
- **Newspaper**, Printing, transport & distribution.
- **Port Operations**, PNSC, Custom and IRS essential staff.
- Media persons on duty.
- **Railway freight** services and their essential staff.
- **Petrol pumps** & related services, oil tankers, LPG, transport, storage etc.
- **Postal / courier** services.
- **Sindh Government Administration & essential staff** vide notification of SGA&CD 18.03.2020 (Officers of closed department to remain on call at their respective places of duty for any further duty/assignment).
- **PSPC & NSPC** (Pakistan Security Printing Corporation & National Security Printing Company) printing fresh currency notes, etc.
- **SECP** related activities and Pakistan Stock Exchange with stress on online / work from home environment.

### **Transport of Goods**

- No ban on transport of food or medical related items and permissible goods.
- No ban on transportation to other provinces from their godowns / port to such province (Such warehouses, godowns can be opened and loading takes place by informing local Deputy Commissioner Office).
- Transport of imported items from Port.

- Transport of export items (one time permission) that are ready to ship from godowns/storage (no factor opening / new production allowed).
- Transport from Karachi Port may leave for distribution during night hours for inter-provincial goods using Northern bypass route.

**Directions for owner / employers / manager**

- i) Employers of industries and commercial entities concerning essential commodities (food) and medicines and other related activities in supply chain are to ensure that the employees maintain safe distance and adopt pre-cautionary measures at work place.
- ii) Employer / Manager of permissible commercial entity, dealing with customers, are to ensure that adequate space is available inside the store, factory, godown etc. and the customers/staff are maintaining safe distance and adhering to precaution. Floor markings and volunteers may be required to guide the flow of the people in queues.
- iii) Employer shall also ensure that any employee complaining or having symptoms of Corona Virus (COVID-19) shall be tested, isolated and reported as per practice in vogue.
- iv) Owner / Employer / Manager will be held responsible in case of failure to comply with the above orders.

**Special directions on Suspects / Positive Cases of COVID-19.**

- 1) All those persons who have been declared positive of Corona Virus shall immediately isolate themselves at Home under intimation to relevant health teams of Health Department or in specified isolation centers established by the Government, and shall remain in isolation till complete recovery.
- 2) All the public / private hospitals / laboratories / health centers, attending Corona Virus patients / conducting Corona Virus laboratory diagnostic test shall send report to Health Department, Government of Sindh twice a day (0100 hrs and 1300 hrs) on Fax No. (021) 99222837 with immediate effect.
- 3) All persons having symptoms of Corona Virus (COVID-19) shall immediately report to the Health Department, Government of Sindh Control Room Contact No. (021) 99204452, (021) 99206565, 0316-0111712 and / or 1166.

Commissioner and Deputy Commissioners of the respective Division and Districts in the province are empowered to further issue any orders, directions or notices for clarifying or putting directions of this order into effect **in coordination and consultation with respective DIGs and SSPs and corresponding officer of Pakistan Rangers at Division / District level**, while issuing such directions, notices or orders in the light of orders issued from Home Department, Government of Sindh, from time to time.

Any person disobeying any direction or order issued under this order or any person facilitating, in any manner, the defiance of this order issued under the Sindh Epidemic Diseases Act shall be deemed to have committed an offence punishable under section 188 of the Pakistan Penal Code as provided under Section-4 of the said Act.

Deputy Commissioners and Assistant Commissioners as well as personal of Law Enforcing Agencies above the rank of Inspector or equivalent are empowered under Section 3(1) of the said Act to take any legal action on any contravention of this order or the directions/orders/notices issued there under including action under Section 188 of Pakistan Penal Code.

This order shall come into force at once and shall remain in force till 14<sup>th</sup> April, 2020.

Sd/-  
**(DR. MUHAMMAD USMAN CHACHAR)**  
ADDITIONAL CHIEF SECRETARY (HOME)  
GOVERNMENT OF SINDH”

6. Pressing for hearing of the main Petition, the Petitioner proceeded with his submissions at considerable length, citing certain verses from the Holy Quran and various published works of several well recognized religious scholars, including the *Tafseer Abbasi*, *Tafseer Ibn-e-Kaseer*, *Tafseer Usmani*, *Kashf-ul-Majoob*, *Sahih al-Bukhari*, *Sahih Muslim* and the *Sermons of Hazrat Imam Jafar Sadique* to emphasise the importance in Islam of congregational prayer, especially the Jumma prayer, and averred that participation therein was the religious obligation of a Muslim male and the right to its performance could not be curtailed. He submitted, quite prosaically, that measures could instead be taken to allow for a congregation to assemble at mosques for the Friday prayer, with precaution against transmission of the disease being taken by controlling the number of attendees, which could be done through limiting participation to senior citizens, and ensuring that those present stood at a reasonable distance from one another. He contended that the means adopted by the Respondent violated Articles 20, 25 and 31 of the Constitution and place reliance on the judgment of the Honourable Supreme Court in the case reported as Khalil-Uz-Zaman v. Supreme Appellate Court, Lahore and 4 others PLD 1994 SC 885 as well as the judgment of a five-member bench of the Lahore High Court in the case reported as Darwesh M. Arbey, Advocate v. Federation of Pakistan through the Law Secretary and 2 others PLD 1980 Lahore 206.

7. Conversely, the learned AAG raised an objection to the maintainability of the Petition on the ground that under Article 203-D of the Constitution the examination of a law or policy on the touchstone of Islamic injunctions, as enunciated in the Holy Quran and Sunnah, lies solely within the domain of the Federal Shariat Court, and the jurisdiction of a High Court in such a matter was barred by virtue of Article 203-G. He contended that as the main ground of challenge raised by the Petitioner was that of a violation of Quranic injunctions, the matter was non-justiciable under Article 199.
  
8. Furthermore, the learned AAG submitted that Covid-19 is an easily transmissible infectious disease, with it being scientifically recognized that the only means of curbing its exponential growth in the absence of a vaccine or cure was to implement a policy of social distancing. He argued that the Order of 02.04.2020 reflected a comprehensive set of measures accordingly devised by the Respondent in exercise of power conferred under the 2014 Act to promote and implement such a policy as part of a concerted nationwide effort taken in conformity with the global initiative to restrict further contagion. He pointed out that mosques had not in fact been closed and it was merely the size of the congregation which had been limited as a necessary and temporary measure based on the emergent circumstances stemming from the Covid-19 outbreak, as endorsed by the edicts of several well renowned religious scholars of the day. He submitted that such measure, and indeed all other steps taken under the 2014 Act as part of the overall lockdown, were subject to review on a periodic basis and would be revised based on a reassessment of the circumstances. He maintained that the prevailing circumstances necessitated the measures that were presently in place and cited the wide reporting of the crisis prevailing in various countries to emphasize the importance of serious and timely measures being taken so as to prevent the healthcare system from being overwhelmed and unnecessary loss of human life.



9. On this note, the learned AAG also invited attention to the comments submitted on behalf of the Home Department, which read as follows:

“In compliance of the order of Honourable High Court of Sindh dated 03.04.2020 in the Constitutional Petition No. D-2110 of 2020, it is respectfully submitted that in view of the fast spread of corona virus (COVID-19) contagion all over the world, the Governments around the world, including Kingdom of Saudi Arabia, United Arab Emirates, Iran, etc after consulting the Health Experts and Ulema and religious leaders, issued directions for suspension of group prayers in mosques **(Annex-I)**.

2. It is also pertinent to mention that the Government of Saudi Arabia has also announced to lockdown and closed the Khana Kaba and Masjid-e-Nabvi with the limited persons allowed to perform activities at religious places, whereas the rest of the faithful are advised to pray at their homes **(Annex-II)**.

2. Accordingly, anticipating the spread and a threat of increase in number of COVID-19 cases, the Government of Sindh decided to take adequate measures to mitigate the risks / slowdown the spread of the COVID-19 contagion.

3. It is further submitted that regarding the restrictions on religious activities, Government of Sindh sought inputs of religious leaders and scholars from all schools of thought who unanimously announced that if deemed necessary by the Government, for medical reasons, it may place any restrictions on the number of persons offering prayers by Jamaat **(Annex-III)**. Pursuant to same, Jamia Darul Uloom Karachi issued religious directive (Fatwa) along with references from Sahih Bukhari (Hadith No. 5728), urging the people to perform Zuhr prayers in their homes **(Annex-IV & V)**.

4. In pursuance of same, Home department, Government of Sindh issued Order No. SO(J-1)/8-1(04)/2020-Corona dated 26.03.2020 to minimize / reduce the risks associated with the spread of virus with inputs from various religious, scholars and Medical Experts that only 3 to 5 persons designated for Mosque, (like Pesh Imam, Moazan, Caretaker) will offer Numaz-e-Jumma ba-Jammat and that the general public will offer their Namaz at their homes **(Annex-VI)**.

5. It is, therefore, prayed that the instant petition may kindly be disposed off.”

10. We have considered the arguments advanced and examined the material on record. Looking to the grounds raised by the Petitioner, the argument taken with reference to Article 25 of the Constitution is clearly misplaced, being based on the contention that banks, grocery stores and courts have been permitted to function, whereas those business and institutions are clearly not on the same plane as mosques, which would instead be relatable to places of worship of other faiths. In this regard, it is apparent from the Order dated 02.04.2020 that the restrictions on religious gathering apply in similar manner to all religions. The reliance by the Petitioner on the judgments in the cases of Khalil-Uz-Zaman (Supra) and Darwesh M. Arbey (Supra) is also misplaced, in as much as the former pertained to an appeal assailing a conviction under S.302 of the Pakistan Penal Code, with the Apex Court citing a Hadith of the Holy Prophet (PBUH) in that framework so as to emphasize the care that Courts must take in dealing with matters of life and liberty, whilst the latter dealt with the imposition of curfew under Martial Law Administration, hence the finding entered with reference to Article 20 that reasonable time ought to be allowed to offer prayers in mosques has to be viewed in that framework, whereas under present circumstances, the gathering of a congregation would of itself give rise to a hub for the spread of contagion potentially constituting a grave threat to public health and welfare. Turning next to the argument raised with reference to Article 31 of the Constitution, it is noteworthy that the same sets out a directive principle of policy rather than a fundamental right, with it being well settled in terms of the judgements of the Apex Court in the case of Miss Benazir Bhutto v. Federation of Pakistan and another PLD 1988 SC 416, as well as the more recent judgment of the Shariat Appellate Bench in the case reported as Government of Punjab through Chief Secretary v, Dr. Zahoor Ahmed Azhar PLD 2019 SC 32, that whilst such principles are to be regarded as fundamental to the governance of the State, they are not enforceable by any Court.

11. Finally, whilst the pivotal importance of prayer as a fundamental pillar of faith central to Islamic dogma is so well recognised as to scarcely require elucidation, and the respective interpretations of the learned divines as to the significance of the congregational Friday prayer, as sought to be relied upon by the Petitioner, are of their own undoubted significance, the comments of the Respondent and the Order dated 02.04.2020 reflect that the measures thereby imposed have been put in place after obtaining guidance from religious scholars across all major sects, and copies of the numerous 'Fatwas' issued by prominent members of the 'Ulema' endorsing the action have been placed on record. Be that as it may, since the jurisdiction to test the *vires* of an enactment or order/rule having the force of law purely on the basis of Islamic injunctions vests exclusively with the Federal Shariat Court, it is unnecessary for us to undertake further scrutiny on that note or digress as to the scholarly interpretations of the divine word at this juncture. Suffice it to say that for purposes of Article 199, it has to be borne in mind that the Order dated 02.04.2020 does not serve to curtail the right to worship *per se*, but merely to congregate, and that too, in view of the exigencies of the prevailing pandemic, in the wake of which there is undoubted medical consensus as to the need for social distancing. Furthermore, the step taken by the Respondent to curtail the size of religious congregations at mosques is evidently not a standalone measure targeted at such places of worship in isolation, but is part of a more comprehensive set of measures designed to curtail social interaction as a whole and the resultant spread of disease across the board. Needless to say, the protocols that have generally been put in place appear to have been designed with due thought as to the outcome sought to be achieved, for a reason that is apparently itself in the public interest under the prevailing circumstances, and a breach thereof at any particular level would inevitably serve to undermine the efficacy of the overall scheme, increase the risk that infection would spread, and endanger human life. The Petitioner has not

been able to satisfy us as to the practicality of the precautions that have been proposed. Indeed, ensuring proper distancing at mosques would be next to impossible and would even otherwise negate the very purpose of a congregation. On the contrary, limiting participation on the basis of advanced age, as suggested, would itself be discriminatory and also expose the very persons who are amongst those most at risk of succumbing to the disease. Ergo, the lifting of such a restriction, even to the limited extent sought, cannot be countenanced and this Court would be remiss in its constitutional duty if a writ were to be issued to that effect under the given circumstances. It also has to be borne in mind that the decision to curtail the size of the congregation in exercise of powers under the 2014 Act is only an interim measure that has been put in place after obtaining guidance from religious scholars, as per the 'Fatwas' available on record. As confirmed by the learned AAG, such measures remain fluid, with the Order of 02.04.2020 only having effect up to 14.04.2020 and the decision as to continuance or lifting/modification of that regime remains subject to review in accordance with the prevailing situation.

12. That being so, it is apparent that the Petition is devoid of merit, hence is dismissed accordingly.

**JUDGE**

**JUDGE**

*TariqAli/PA*