

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No.D-2378 of 2020

DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Yousuf Ali Sayeed

Agha Ali HaiderPetitioner

Versus

Federation of Pakistan and others.....Respondents

13.05.2020

Mr. Muhammad Qasim Niazi, advocate for the
Petitioner alongwith Petitioner.
Intervener Syed Mehmood Akhtar Naqvi present in person.
Mr. Jawad Dero, Addl. A.G. Sindh.
Mr. Amanullah Zardari, Deputy Secretary/Focal Person,
Home Department, Government of Sindh present.
Mr. Imtiaz Mangi, Assistant Commissioner on
behalf of Commissioner Karachi present.
Ghias Khan DSP Traffic Police district South, Raza Mian
DSP Legal C.P.O alongwith Muhammad Tufail and Tasdiq
Inspectors.

MUHAMMAD ALI MAZHAR, J: This petition has been filed by the
General Secretary, Passban-e-Azza Pakistan whereby he has prayed for
setting aside an order dated 27.04.2020 passed by Home Department,
Government of Sindh which is available at page 21 (annexure A) of the
petition. The impugned order is reproduced as under:-

“No.SO(Jud-1)HD/8-1(04)12020-Corona

Government of Sindh
Home Department

Karachi, dated 27th April, 2020

ORDER-ADDENDUM

In continuation and partial modification of vide order No.
SO(Jud-I)HD/8-1(04)/2020-Corona-SOPs dated 23rd April, 2020
“Order-Ramzan Taraweeh as per agreement with Ulemas”.

Following being of similar nature are deemed to be included:

All religious activities during the holy month of Ramzan with gathering of people like Majalis & Jaloos for Shahdat-e-Imam Ali (AS), Religious Rallies/Gatherings & Mehfil-e-Shabeena being not farz shall not be held.

All the directions, instructions contained therein the order dated 23.04.2020 shall apply.

Additional Chief Secretary (Home)
Home Department Government of Sindh

No.SO(Jud-1)HD/8-1(04)/2020-Corona

Karachi dated the 27th April, 2020”

2. The notice was issued to the respondents for submitting their reply. Syed Mehmood Akhtar Naqvi filed an application under order 1 Rule 10 CPC (CMA No.11216 of 2020) who wants to be impleaded as petitioner to support the original petitioner. Today Mr. Amanullah Zardari, Focal Person on Court Matter, Home Department, Govt. of Sindh has submitted their reply which is reproduced as under:-

“It is respectfully submitted that in view of the prevalent COVID-19 infection which has been declared Pandemic and has affect almost all the countries of the world, the Governments around the world, including Muslim Countries like Kingdom of Saudi Arabia, United Arab Emirates, Iran, Iraq etc after consulting the Health Experts and Ulema and religious leaders, issued directions to limit the congregational prayers in Holy Mosques and other sites. (Annex-I).

2. It is also pertinent to mention that the Government of Saudi Arabia and Government of Iraq had also announced to lockdown and closed the Khana Kaba, Masjid-e-Nabvi as well as Najaf-e-Ashraf and Karabala with the limited persons allowed to perform religious obligation at these religious places, whereas the rest of the faithful are advised to pray at their homes. (Annex-II & III)

3. Accordingly, Government of Sindh, in realization of the apprehension related to local spread of the dangerous virus, found it expeditious to take adequate measures to mitigate the risks/slowdown the spread of COVID-19 contagion. With the passage of time, it has become evidently clear from the ever soaring number of infected cases that a concrete strategy is warranted on part of Government to control the spread of this infection.

4. 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-IV). 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 Zurh prayers in their homes (Annex-V & VI).

5. Moreover, the Home Department, Government of Sindh has not issued any such notification on 27.04.2020. This is managed/motivated/misused/misinterpreted document. Government of Sindh has never issued any such notification for Majalis/Juloos whatsoever. Federal Government is in lead negotiating at national level and provinces will give inputs and will toe Federal Government policy that may be applied by Provinces as per on ground situation of each province and commitment given by organizers in wake of COVID-19. (underlining added).

6. In the view thereof, it is humbly submitted that since no order restricting the Majalis/Juloos procession has been issued by Home Department Government of Sindh, therefore, it is prayed that the instant petition may kindly be dismissed. (underlining added).

Sd/-
AMANULLAH ZARDARI,
FOCAL PERSON ON COURT MATTERS
HOME DEPARTMENT”

3. The learned Addl. A.G Sindh as well as representative of the home department clearly stated that the notification/order under challenge by the petitioner was never issued by the Government of Sindh, Home Department and it is a fake order attached with the petition and the same contention has been raised in Paragraphs 5 and 6 of their reply that the Home Department, Government of Sindh has not issued any such notification on 27.04.2020 and it is further stated that this is a managed order however it is mentioned that Federal Government is in lead negotiating at national level and provinces will give inputs and will toe Federal Government policy that may be applied by provinces as per on ground situation of each province and commitment given by the organizers in the wake of Covid-19.

4. Today the Focal Person of Home Department has also produced a copy of “Order-Addendum” dated 12.05.2020 which is reproduced as under:-

“ORDER-ADDENDUM

In continuation and partial modification of vide order No. SO(Jud-I)HD/8-1(04)/2020-Corona-SOPs dated 23rd April, 2020

“Order-Ramzan Taraweeh as per agreement with Ulemas”, following religious practices shall also deem to be included:

- All kind of Religious Gatherings, Processions and Rallies.

Sd/-
Additional Chief Secretary (Home)
Home Department, Government of Sindh

No.SO(Jud-1)HD/8-1(04)/2020-Corona Karachi, dated the 12th May, 2020”

5. The petitioner as well as intervener both submit that in view of the order/addendum dated 12.05.2020 the Home Department has already included all kinds of religious gatherings, processions and rallies in the “Order-Ramzan Taraweeh as per agreement with Ulemas” which was issued by the Government of Sindh on 23.04.2020 keeping in mind 20 points SOPs formulated in view of the consultation between the President of Pakistan and Ulemas.

6. Since the impugned order dated 27.04.2020 which is under challenge here is said to have never been issued by the Home Department, Government of Sindh and clear statement in writing has been given to this effect, therefore, the petition has become infructuous and is disposed of accordingly along with pending applications.

JUDGE

JUDGE

TariqAli/PA