

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Yousuf Ali Sayeed and Agha Faisal, JJ.**

CP D-2752 of 2020 : Syed Mehmood Akhter Naqvi
vs. Chief Minister & Others

For the Petitioner : Mr. Syed Mehmood
Akhter Naqvi
(In Person)

Date of hearing : 17.09.2020

Date of announcement : 17.09.2020

ORDER

Agha Faisal, J. (1) Granted. (2) Granted subject to all just exceptions. (3) The present petition has been filed against the Chief Minister, Federal Minister Religious Affairs and others assailing the Order dated 01.06.2020 ("Covid-19 Order") issued by the Government of Sindh pursuant to Section 3(1) of the Sindh Epidemic Diseases Act 2014 ("Act") on the premise that placing of restraints upon public processions and gatherings was contrary to the law.

2. At the very onset the petitioner, appearing in person, was required to address the Court with respect to the maintainability of the petition. The petitioner argued *simpliciter* that religious congregations and processions could not be curtailed under the law, hence, such may be held by this Court to nullify the restraint placed vide the Covid-19 Order.

3. It is observed that relief was sought against the Chief Minister, and others, notwithstanding Article 248¹ that precludes such an endeavour. The protection envisaged, in respect of holders of cited offices, has been a consistent feature of our Constitutional history² and the present petition disregards the settled principle of law.

4. It is also noted that the petitioner's basic argument was that the restraint under scrutiny violated the principles of Islamic law. Article 203D³ categorically vests the Federal Shariat Court with jurisdiction to examine and determine such questions and Article 203G⁴ bars this Court from exercising any jurisdiction in such regard. No justification

¹ **248. Protection to President, Governor, Minister, etc.**-(1) The President, a Governor, the Prime Minister, a Federal Minister, a Minister of State, the Chief Minister and a Provincial Minister shall not be answerable to any Court for the exercise of powers and performance of functions of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of those functions...

² *Para materia* provisions are Section 306 of the Government of India Act 1935, Article 233 of the 1956 Constitution and Article 116 of the 1962 Constitution.

³ 203D. (1) The Court may, 2 [either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.

⁴ 203G. Save as provided in Article 203F, no court or tribunal, including the Supreme Court and a High Court, shall entertain any proceedings or exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Court.

was articulated as to how this Court could exercise jurisdiction in view of the prevailing law.

5. The Covid-19 Order was issued pursuant to the Act and no argument was placed before us to suggest that the instrument was issued otherwise than in consonance with the Act. It is also pertinent to mention that no challenge was advanced in so far as the validity of the Act itself is concerned.

6. The exercise of powers, per Article 199 of the Constitution, was required to be undertaken upon application of an aggrieved person⁵. The petitioner has made no submission before us to suggest that he falls within the definition of an aggrieved person⁶.

7. In view of the reasoning and rationale herein contained, we are of the considered view that the petitioner has been unable to set forth a case for the exercise of extra ordinary Constitutional jurisdiction by this Court, hence, this petition is hereby dismissed *in limine*.

JUDGE

JUDGE

Khuhro/PA

⁵ Barring certain exceptions, i.e. writ of *quo warranto*, however, no case was made out to qualify the present petition within an exception recognized by law; 2019 SCMR 1952.

⁶ *Raja Muhammad Nadeem vs. The State* reported as PLD 2020 Supreme Court 282; *SECP vs. East West Insurance Company* reported as 2019 SCMR 532.