

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-2116/2018

Date	Order with signature of Judge
------	-------------------------------

1. For orders on CMA No.2515/2021
2. For orders on MIT report dated 20.04.2021, 16.04.2021, 16.02.2021, 27.01.2021.
3. For order on CMA No.2247/2021
4. For orders on CMA No.2248/2021
5. For order on CMA No.4577/2020
6. For hearing of CMA No.2572/2020
7. For order on CMA No.1799/2020
8. For order on CMA No.1800/2020
9. For hearing of CMA No.1288/2020
10. For hearing of CMA No.600/2020.

04.05.2021

M/s. Tajamul Hussain Lodhi, Abdul Hassnain and Ahmed Khan Bugti, advocates (Amicus Curie).

Mr. Zia A. Awan, Advocate.

Malik Waseem Iqbal, Advocate for Sindh Education Foundation.

Mr. Ali Zardari, A.A.G, Sindh alongwith Mr. Athar Hussain Bugti, Secretary, Religious Affairs, Zakat & Ushr Department, Government of Sindh; Mr. Tahir Mehmood, Director PMC, Social Welfare Department and Mr. Mehmood ur Rehman, Director VA, Social Welfare Department; Syed Zeeshan-ul-Haq, S.V.P, Sindh Bank Limited; Mr. Attaullah Khan, Deputy Administrator, Zakat, Karachi Division; Mr. Alam Raz, District Officer Zakat Karachi Central and South; Mr. Muhammad Sadiq, District Officer, Zakat, Tariq Malik Audit Officer, Kashmore Kandhkot. Badin, DSP Mushtaq Abbasi, on behalf of I.G.P, Sindh.

Arbab Ali, Paid Zakat Clerk, Naushero Feroze (intervener).

.....

ORDER

SALAHUDDIN PANHWAR, J. Pursuant to order dated 20.04.2021, Secretary, Religious Affairs, Zakat & Ushr Department, is present alongwith District Officers Zakat and submits details of disbursement of Zakat for the last two years; however he admits that *Guzara Allowance* cards are like ATM cards which are issued by Sindh Bank Limited with open pin codes and are received by head office collectively, thereafter Zakat Council distributes them to different

districts for distribution thereof; it is further clarified that in 2018 number of beneficiaries was **90,851** and in 2020 number of beneficiaries is **1,88,186**; further Secretary contends that this amount is to be distributed by the Sindh Bank. SVP of Sindh Bank is present who admits that every year they generate *Guzara Allowance* ATM cards and hand over the same to Zakat Council with open pin codes.

2. Issuance of **open pin code** *Guzara Allowance* cards is quite surprising because the same is also in complete negation to clause 2(2.5) of Sindh Zakat Disbursement Procedure which reads as:-

“It shall be the responsibility of the District Zakat Officer and Chairman, Local Zakat Committees to ensure that Zakat Paid Clerks or any other person are not involved in the payment of Guzara Allowance and Cheques / E-Sahulat Cards are not delivered to beneficiaries through them.”

The open pin Code cards, *prima facie*, means that same can be used by anybody and insist to ensure payment directly to the *Musahqeen* shall fall under heavy clouds. At this juncture learned A.A.G. Sindh contends that about one and a half years ago an MoU was signed by NADRA, Zakat Council and Sindh Bank Limited that all amount of *Guzara Allowance* will be paid through biometric verification system; for such purpose Sindh Government allocated Rs.50,00,000/- funds as cost required by NADRA, however that mechanism is yet not in the field due to present pandemic situation. It is admitted by Sindh Bank that annually they generate **Guzara Allowance Cards** with open pin codes which, per the Zakat Council, are distributed. The NADRA is also functioning. *Prima facie*, all three components are functioning hence plea of *pandemic* in not getting agreed mechanism functional, I

would insist, is not logical. It is the *biometric verification* alone which shall serve the purpose of issuance of such like card (s), particularly when particularly in view of clauses 3(3.4 & 3.5) of Sindh Disbursement Procedure which read as under:-

“3.4 Separate record of all Istehqaq Certificates renewed during a financial year will be maintained in a register in the manner given at Annexure-A. **As well as data base of all beneficiaries shall be maintained at District Committee.** Maintenance of data base shall be applicable in both modes of payments i.e through **crossed Cheque and E-Sahulat Card**”

“3.5 No application shall be considered unless it has been received and entered in the prescribed register / system of data base. Such applications of the most deserving person will be considered in order of priority and result of District poverty survey.”

Prima facie, issuance of such like cards with *open pin codes* is in complete disregard to what the procedure aims rather the same allows the possibility of misuse thereof. Since, Sindh Bank is issuing such like Card (s), therefore, at this juncture it would be conducive to refer guidelines of State Bank of Pakistan (Regulations 4.2.3 and 4.2.4 of the Regulations for Payment Card Security, 2016) with regard to issuance of ATM and other cards as under:-

4.2.3. Card Issuance

- a. CSPs shall not issue unsolicited Payment Cards to their accountholders and shall take consumer's consent for Payment Card issuance in writing or through other electronic channels using their registered numbers, emails and digitally captured signatures etc.
- b. CSPs shall take consumer consent regarding the utilization of Payment Cards on various ADCs or their cross border usage while maintaining the record of consent as per SBP record retention policy.
- c. CSPs shall ensure that the Payment Cards issued to the consumers are personalized i.e. **the cardholder name shall be embossed in English language at the time of issuance.**

4.2.4. Card Delivery & Activation

- a. CSPs shall maintain strong controls for management of inventory for the issued and non-issued Payment Cards.

- b. CSPs shall ensure that secure procedures are adopted for activation of new and replaced Payment Cards.
- c. CSPs shall dispatch inactive Payment Cards to their consumers at their registered addresses through registered courier services. In case of delivery of Payment Card to consumer at branch, the CSP shall perform due verification of consumer.
- d. CSPs shall activate Payment Card at the branch upon in-person request by the cardholder or on receipt of call from cardholder's registered contact number.
- e. Call Center and IVR shall be capable of interacting in English and Urdu languages. Regional languages shall also be considered for communication with consumers.

Prima facie, it is strange that a bank is violating Rules of 2016 by issuing and handing **over around 2,00,000 ATM cards to Zakat offices with open pin codes**. Bank Officer, when confronted, contends that since this is the practice as started in the year 2014 however he admits that Rules of 2016 are not permitting that procedure adopted by the Sindh Bank Limited dealing with Zakat Councils.

3. Secretary, Religious Affairs, Zakat & Ushr Department, contends that in order to maintain transparency it would be in the interest of justice to ensure that all amount is distributed through a biometric verification system by concerned bank officials to individuals as registered with Zakat Council. I am to insist here that balance of right and responsibility is to be maintained by Zakat Council while dealing with issue of *Guzara Allowance*. It is the absolute responsibility of Zakat Council to ensure *direct* payment of such amount to the *Mustahqeen* through prescribed procedure i.e *Cross cheque* or *E-Sahulat Card with biometric verification* without allowing any involvement of anybody else in such process else the right of *Mustahqeen* may be prejudiced or exploited. Such balance, in any manner, does not allow continuity of practice of such cards with

open pin codes therefore, the same is hereby stayed and be **blocked immediately**.

4. Accordingly Sindh Bank Limited shall disable all open pin codes assigned to Guzara allowance cards and ensure that amount is paid through biometric verification system as agreed with the NADRA. In case Sindh Government has not released Rs.50,00,000/- as allocated same shall be released to NADRA to avoid further delay with regard to payment of Guzara Allowance. The Government of Sindh is hereby directed to ensure *immediate* satisfaction of a *signed* MoU so as to ensure functioning of procedure of *bio-metric procedure* for payment of Guzara Allowance to *Mustahqeen*. All the components, needless to add, shall extend every cooperation in making such practice functional so that right of *Mustahqeen* be not prejudiced for an indefinite period in name of process. It is further added that since it is the absolute responsibility of the Council that *Mustahqeen* receives his / her due amount therefore, till the time such procedure is adopted those holding such *cards* shall be assured payment through cross-cheques.

5. Here, it is worth mentioning that since the *basic* purpose and object of the '**Zakat**' was / is to rehabilitate and not to make people dependent for payment of such amount, therefore, the Council, *hopefully*, shall consider introduction of **Rozgar Scheme** instead of **Guzara Allowance** which should not be limited for **men** alone but for **women** interested in running their own business and nestled in Darul Aman and other refuge centers. Needless to add that *Guzara Allowance* will keep *family* waiting for such amount *alone* while rehabilitation of a single person from family shall help

them to live with honour and prestige. It is always better to shorten such list of *Mustahqeen* by equipping them with **Rozgar**. The *Guzara* allowance should, *normally*, be allowed only where the family/*Mustahiq* is not capable of doing any *rozgar*. The council, it is added, shall also appreciate that amount of **Guzara allowance** be used for rehabilitation in a smart manner even by increasing limit of such amount while appreciating the difference between **Guzara** and **Rozgar**.

6. With regard to healthcare, Secretary Religious Affairs, Zakat & Ushr Department, contends that in healthcare, amount distributed to the districts, is to be released by Committees apart of Social Welfare Officers, Zakat Local Councils and Medical Superintendents of concerned hospitals. The Secretary admits that in disbursement of healthcare amount, role of chairman Zakat Council has been excluded and with regard to Social Welfare and Rehabilitation it is contended that there are approved institutions and Zakat Council is required to release zakat to those institutions like orphanage, disabled persons, however unfortunately in majority of districts such institutions are not in existence hence this amount is being lapsed ever year.

7. Admission of lapse of Zakat fund amount is quite strange *particularly* when it is the responsibility of the Council to use the amount *smartly* for different heads when objective thereof was / is **rehabilitation** and **assistance** to *Mustaqeen*. It is pertinent to add that it is never advisable to place certain amount in a *district* in a particular head when in such district there exists no need for such *head*. It is always better to use the amount in different head rather than letting the same lapsed. Here it would be relevant to refer head-

wise disbursement of zakat funds by district zakat committees during 2018-2019 and 2019-2020 as under:-

SNO	Name of head	2018-2019		2019-2020		Total	
		Nb of benef.	amount	Nb of benef.	amount	Nb of benef.	amount
1	Guzara allowance + eid package	98,335	1306,690,000	94,851	1,327,914,000	188,186	2,634,604,000
2	Stipend to students of deeni madaris	1876	4,898,050	4980	14,523,534	6856	19,421,584
3	Healthcare	5488	18,607,071	3693	17,700,281	9181	36,307,352
4	Social welfare and rehabilitation	2248	9,973,500	2280	10,479,700,000	4528	20,453,200
5	Marriage assistance to unmarried women	802	15,680,000	1271	24,720,000	2073	40,400,000
	Total	103,749	1,355,848,621	107,075	1,395,337,515	210,824	2,751,186,136

8. Regarding health care, it is worth adding that a detailed procedure for disbursement thereof is also provided in the Sindh Zakat Disbursement Procedure which includes:

“The authority and responsibility of Health Welfare Committee shall be as follows:-

- i. Approve expenditure incurred within the prescribed ceiling.
- ii. Approve relaxation of ceiling in cases requiring excess expenditure.
- iii. Exercise caution while relaxing ceiling in order to safeguard the interests of other Zakat patients.
- iv. Satisfy proper maintenance of accounts and submission of monthly utilization reports under their signatures.
- v. Review audit objections and expedite action for their settlement.
- vi. Take serious notices of irregularities detected by audit or other inspections
- vii. Satisfy completion of formalities by the Beneficiaries relating to Istehqaq etc.

- viii. Carry out random checking of quality of treatment coupled with the satisfaction of Beneficiaries.”

This, being one of the most vital part of disbursement of Zakat fund, needs to be examined, therefore, the Health Welfare Committee shall submit report with reference to above criterion which should be placed before this Court on next date.

9. With regard to marriage assistance to unmarried women, it would be conducive to refer relevant paragraph No.6 of order of this court in CP No.D-1262/2017 and other connected petitions, which is that :-

“6. Moreover, petitioner Shaheen Mirani, who is confined in Darul-Aman since last three years, is seeking protection and contends that she intends to contract marriage on her own choice but she has apprehension that if she would be set at liberty, Police posted at Darul-Aman may leak this news, that would cause serious threat to her, hence, she prayed that her marriage may be arranged at Darul-Aman. It is also pleaded that many of the girls taking refuge in Darul-Aman, married girls file Suits for Khulla and intend to contract marriage as well other girls, but there is no mechanism by Darul-Aman Authorities / Social Welfare Department to arrange their marriage in darul aman. It has also come on record that zakat council has allocated a head of marriage support program but not a single precedent is quoted that zakat council has arranged marriage of any female having shelter in darul aman. Since, the purpose and object of Darul-Aman is never permanent but to provide "aman" (protection/safety) till the aggrieved reaches to proper and lawful hands which shall always include 'husband' if aggrieved is sui-juris. To have the husband in exercise of right of puberty (sui-juris) must always be protected by providing necessary assistance and every possible aid. The temporary aman (protection/ safety) shall never be an excuse to defeat such lawfully protected right. The police, administration of Darul-Aman as well Zakat council must show a vital role in this regard and so is hoped for future. However, as temporary arrangement, the Secretary Social Welfare Department and Secretary Zakat Council is directed to constitute a committee which shall ensure that the girls, taking refuge in Darul-Aman, are provided complete assistance in contracting marriage(s) of their own freewill and choice by the expenses to be paid by the Zakat Council as well by the Social Welfare Department. The committee shall also recommend a comprehensive mechanism to tackle such grievance on permanent basis which should include apprehension of any future harm and reach of such couple to a secure place. Similarly, marriage of petitioner Shaheen Mirani shall be arranged within one month. Thereafter, she would be at a liberty to leave Darul-Aman as

and when she feels comfortable and no hindrance would be created.”

However, the Secretary and district Officers present in court are unable to point out any marriage assistance for those destitute women nestled in Darul Amans or private shelter homes. When confronted, the Secretary Religious Affairs, Zakat & Ushr Department, contends that they will carry out marriage ceremonies at district and divisional level by increasing the amount of *jahaiz* and will also arrange the marriage of girls, nestled in shelter homes including Darul Aman(s) if they intend to contract marriage, accordingly they shall not release any amount to the individual cases.

10. The contention of the Secretary, Religious Affairs, Zakat & Ushr Department, taken on record, with appreciation with hope that due steps shall be taken in this regard. Needless to add that providing a **home** to a destitute lady will, *hopefully*, shall be a permanent shelter/Aman to her. However, in order to make transparency in marriage assistance to unmarried women, social welfare and re-habilitation, it is agreed by the Secretary that that amount shall be released by the district officers, Zakat Council, district Women Development Officers and Assistant Commissioner (as provided in the Act), all amount to the deserving persons as decided by the District Zakat Council and Local Councils shall be paid to the deserving persons in presence of Assistant Commissioner and in presence of Officers of Women Development Department as well as Chairman of the Zakat Council and that record shall be maintained database. All cheques shall be signed by Assistant Commissioner and Co-signatory with Social Welfare Officer of Zakat Officer in either case.

11. The Zakat Council shall also consider *joint* marriages which shall help in lessening the expenditure. The council shall also introduce registration of those *deserved* for such purpose and for such purpose shall chalk-out a mechanism which is not limited but includes giving publicity on website.

12. With regard to education head, admittedly amount is directly being transferred to universities and colleges in view of orders of this court passed in CP No.D-2248/2013, CP N.D-214, 652 and 857 of 2017. It is expected that Zakat Council will increase the amount regarding education scholarships.

13. Secretary Zakat Council was directed that they will launch website of zakat council and update complete record enabling everyone that the amount of zakat is released and is utilized in accordance with law. He shall ensure the same within two months. In case of failure, his act will be considered as pejorative and he shall be liable for penal action.

14. Chairman Zakat Council shall ensure re-exercise of new lists for entitlements of zakat as *guzara* allowance and those lists shall be displayed on the official website but assuring no harm and prejudice to dignity of such registered persons which shall be handed over to Sindh Bank Limited for issuance of ATM cards and shall be handed over in every district under the supervision of Assistant Commissioner(s) and District Zakat Officer(s) concerned as well as Chairman in either case, by holding ceremonies arranged by Deputy Commissioner(s).

15. It has come on record that amount in marriage assistance, Social Welfare and Re-habilitation is given by **Aasan account**. Bank Officer present contends that Aasan account does not require any verification and those accounts are KYC (Know Your Customer) compliance. The *Aasan account (KYC)*, *prima facie*, shows that this entirely is at discretion of the Bank which admittedly is in negation to procedure, so introduced by the Sindh Zakat Disbursement Procedure. The identity of *Mushtaqeen* was / is to be maintained and assured by the Council *alone* and not by the Bank(s). The Bank(s) was / is to ensure what the clause 2(2.4) demands as:-

“2(2.4) Till the time E-Sahulat Card system is introduced, close liaison will be maintained with local banks to ensure that beneficiaries face no difficulty in the opening of their accounts for credit of their cross cheques. Refusal of any bank to cooperate for this purpose will be reported immediately to the Chairman District Zakat Committee and Chief Administrator Zakat simultaneously.”

Accordingly, the Council shall also appreciate this aspect because it is again reiterated that it is the *absolute* responsibility of the Council that only *Musahqeen* receive the amount which, too, without any controlling role of anybody and that payment shall be through biometric system connected with NADRA, or cross cheque only.

16. Application under Order 1 Rule 10 CPC is dismissed as matter is subjudice before divisional bench of this court in CP No.D-3258/2014.

17. This order shall be communicated to all concerned with separate direction (supra) including Governor State Bank of Pakistan and learned Attorney General for Pakistan. Learned MIT-II shall ensure compliance.

To come up on 16.08.2021 at 11.30 a.m.

J U D G E