

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**  
C.P. No.D-2366 of 2023

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Dated: \_\_\_\_\_ Order with signature of Judge(s)

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1. For orders on Misc. No.13733/2023.
2. For orders as to maintainability of the Petition.

Yousuf Ali Sayeed, J.  
Mohammad Abdur Rahman, J

Date of hearing : 06.06.2023:-

Petitioner : Abdul Jalil Khan Marwat is present in person.

Respondents : The Province of Sindh & Another.

**ORDER**

**Mohammad Abdur Rahman, J.** This Petition has been maintained by the Petitioner, who is a practicing Advocate of this Court, claiming to be a worker of the Pakistan Tehreek-e-Insaf, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The Petitioner seeks to quash 51 orders passed under Sub-section (1) of Section 3 of the Sindh Maintenance of Public Order Ordinance, 1960 (hereinafter referred to as the "Impugned Notices") and seeks the release of the 51 detainees who are being held in custody by the Respondents pursuant to the Impugned Notices.

2. This Petition was first listed on 29 May 2023 when the Advocate for the Petitioner was put on notice to satisfy this Court as to the maintainability of this Petition keeping in mind that the Petitioner was not directly impacted by any of the Impugned Notices i.e. as none of the 51 detainees were his relatives. The matter was listed today for orders on the maintainability of the petition and on which arguments were heard today on an urgent application moved by the Petitioner where he was once again asked as to what *locus standi* he possessed to maintain this Petition.

3. The Petitioner contended that even though he had no personal relationship with either of the persons mentioned in the Impugned Notices, he maintained this Petition in the “public interest” under the interpretation given to the expression “Aggrieved Person” by the Supreme Court of Pakistan in Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. He relied on no case law in support of his contention.

4. We have heard the Petitioner and perused the record. The Petition that has been maintained before us and seeks the following relief:

- “ ...
- a. to immediately Release all the arrested and detained PTI Workers and Leaders
  - b. To Suspend /Quash all the Detention Orders/ Notifications issued by the Government of Sindh
  - c. To take the strict actions against the responsible for issuing the illegal unlawful and unconstitutional Orders/Noticcations.
  - d. To stop the Respondents from further harassment on the name of MPO to PTI Workers/Leaders
  - e. Any other remedy which this Honourable Court thinks fit.”

As is apparent the Petitioner seeks relief in the nature of a writ of mandamus:

- (i) under Sub-Clause (ii) of Clause (a) of Sub-Article 1 of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to quash the Impugned Notices, and
- (ii) under Sub-Clause (i) of Clause (a) of Sub-Article 1 of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to direct the Respondents to release the 51 detenues.

5. The locus standi of an “aggrieved person” under Sub-Clause (i) and (ii) of Clause (a) of Sub-Article 1 of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has been considered by the

Supreme Court of Pakistan in the decision entitled **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi**<sup>1</sup> and wherein it was held that: <sup>2</sup>

“ ... “Reference may also be made to the treatise Judicial Review of Administrative Action (Fifth Edition) by de Smith, Woolf & Jowell relied upon by Mr. Naim-ur-Rehman, wherein the authors have summarised the concept of locus standi in the context of ‘sufficient interest’ as under:-

“The general approach can be summarised as follows:-

- (1) ‘Sufficient interest’ has to receive a generous interpretation. It has to be treated as a broad and flexible test.
- (2) Only issues as to standing where the answer is obvious should be resolved on the application for leave. In other cases lack of standing should not prevent leave being granted.
- (3) Issues as to standing at the leave stage do not depend on the remedy which is then being claimed.
- (4) If the applicant has a special expertise in the subject-matter of the application that will be a factor in establishing sufficient interest. This applies whether the applicant is an individual or some type of association. The fact that the applicant’s responsibility in relation to the subject of the application is recognised by statute is a strong indication of sufficient interest.
- (5) A great variety of actors are capable of qualifying as sufficient interest. They are not confined to property or financial or other legal interests. They can include civic (or community) environmental and cultural interests the interests can be future or contingent.
- (6) The gravity of the issue which is the subject of the application is a factor taken into account in determining the outcome of questions of standing. The more serious the issue at stake the less significance will be attached to arguments based on the applicant’s alleged lack of standing.

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<sup>1</sup> 1999 SCMR 2883

<sup>2</sup> Ibid at pg 2904-2905

- (7) In deciding what, if any, remedy to grant as a matter of discretion, the Court will take into account the extent of the applicant's interest. At this stage different remedies may require a different involvement by the applicant."

The abovequoted passage from the well-known treatise indicates that the concept of locus standi has been whittled down inasmuch as the expression "sufficient interest", inter alia, includes civic or (community) environmental and cultural interest."

6. The decision of the Supreme Court of Pakistan states that while admitting a Petition (equivalent to the expression "granting leave" as is used in the jurisdiction to grant Judicial Review in the United Kingdom) this Court is not to be hidebound by following the strict rules of locus standi unless the answer is "obvious". Similarly, while admitting a Petition this Court should not correlate the issue of determining locus standi against the relief that is being claimed in the Petition. This Court should rather look at the "special expertise" of a person maintaining the Petition and also examine the "gravity of the issue" being raised i.e. the more grave the issue being raised, the less the threshold that would have to be crossed by the Petitioner in maintaining a Petition. These factors are to be taken into account while also examining any "personal interest" of the Petitioner in respect of the relief that is being sought by the Petitioner.

7. While noting that the Petitioner's legal expertise and as to the gravity of the issue i.e. a large number of persons of a particular political party being detained, we do not think that the issues raised and the factual circumstances that have occurred thereafter merit us to consider admitting this Petition as per the criteria stipulated by the Supreme Court of Pakistan in **Ardeshir Cowasjee vs. Karachi Building Control Authority (KMC), Karachi.**<sup>3</sup> We are personally aware numerous Petitions have been presented before this Court challenging notices issued by the

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<sup>3</sup> *Ibid.*

Respondents under Sub-section (1) of Section 3 of the Sindh Maintenance of Public Order Ordinance, 1960 and in all of which interim relief has been granted to release the detainees. The “gravity of the issue” having been mitigated on account of intervening events as per the personal actions taken by the relatives of the various detainees, the admission of this Petition to our minds may cause a multiplicity of petitions being filed by persons who are unable to confirm whether or not the detainees are in custody or have since been released and will overburden the entire system and may even delay the release of detainees. We had specifically asked the Petitioner as to whether he would be able to assist us to confirm as to whether or not such persons had been released by the Respondents and he was unable to provide any satisfactory response to our query. This further confirmed our fears and led us to conclude that the persons best placed to maintain such a Petition would be the relatives of the detainee and not the Petitioner.

8. We are therefore of the opinion that the Petitioner does not have any locus standi to maintain this petition which is misconceived and which was dismissed by us on 6 June 2023 and these are the reasons for that order.

JUDGE

Nasir P.S.

JUDGE

