

PRESENTED

07-5-2019

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2947  
09/5/19

IN THE HONORABLE HIGH COURT OF SINDH CIRCUIT  
COURT HYDERABAD

CONSTITUTION PETITION NO. OF 2019

D-1429

1. Sayed Ikhtiar S/O Mukhtiar

Adult, Muslim, R/O H/No 16 Madina Colony City, Taluka & District

Tando Allahyar.....PETITIONERS

VERSUS

1. Province of Sindh, through

Chief Secretary , Sindh Secretariat Karachi

2. Deputy Commissioner Tando Allahyar

3. Assistant Commissioner Tando Allahyar .

4. Mukhtiarkar ® District Tando Allahyar

5. Senior Superintendent of Police Tando Allahyar

6. S.H.O P.S Section Tando Allahyar

.....RESPONDENTS





**JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

C.P. Nos. D-1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436,  
1437, 1446, 1447 and 1448, 1450 & 1451 of 2019.

*Present:-*

*Mr. Justice Muhammad Iqbal Kalhoro,*  
*Mr. Justice Fahim Ahmed Siddiqui*

Date of hearing: 08.05.2019

Date of Decision: 08.05.2019

Mr. Kanji Mal advocate for petitioner in C.P No.D-1431 of 2019.

Mr. Altaf Ahmed Shahid Abro advocate for petitioner in C.P No.D-1432 of 2019.

Mr. Karim Bux Rind advocate for petitioner in C.P No.D-1433 & 1434 of 2019.

Mr. Zaffar Ali Chandio advocate for petitioner in C.P No.D-1435 of 2019.

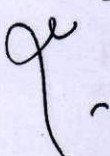
Mr. Mohammad Hamid Ghouri advocate for petitioner in C.P No.D-1447 of 2019.

None present for petitioner[s] in C.P No.D-1436, 1437, 1446, 1448, 1450 & 1451 of 2019.

**J U D G M E N T**

*Fahim Ahmed Siddiqui, J-* Since all the aforementioned petitions deal with the same subject; therefore, this single judgment will suffice to dispose of all of them.

2. The petitioners have claimed exclusions from the operation of Ehtram-e-Ramzan Ordinance, 1981 (hereinafter referred as 'Ordinance') on the ground that their eateries are situated at a place



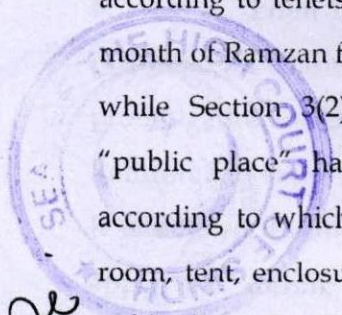


wherein they can continue their businesses on account of exemption given under the Ordinance.

3. The learned Additional Advocate General present in the Court waived notice and submits that he is ready to argue the matter. We have heard the arguments of learned advocates appearing for the petitioners as well as learned Additional A.G. We have also perused the Memo of Petitions, relevant laws and cited case laws.

4. Islam, a religion of peace known to be one of the most cordial religions around the world. With Islam comes the five pillars which constitute of the acts of faith, prayer, fasting, zakat, and hajj. Fasting is performed by the Muslims all over the world in the holy month of Ramzan, as such, the Muslims consider the month of Ramzan as sacred and pay special homage to this month. The Ordinance is promulgated keeping in view of this general respect and reverence of the holy month. The Ordinance and Rules made thereunder provide certain guidelines for Ehtram-e-Ramzan and also provide certain penal action for doing acts, which violate the provisions of the Ordinance. The month of Ramzan teaches us acquiring a supreme level of patience and endurance, as such, it is the duty of every citizen especially Muslim subject of the State of Pakistan to give full reverence to this month and not to make a joke of the sanctity of Ramzan by getting advantage of some provisions of law, which have entirely distinct and different purpose rather than one claimed in the instant petitions.

5. While examining different sections of the Ordinance, we are fully conscious that the respect and honor of the holy month of Ramzan is inculcated in the minds and hearts of the Muslims since generations and the same has been well translated in the form of the Ordinance. Section 3(1) of the Ordinance prohibits any person, who according to tenets of Islam is under an obligation to fast during the month of Ramzan from eating, drinking or smoking in a "public place" while Section 3(2) provides punishment for violators. The word "public place" has been defined in Section 2 of the Ordinance, according to which it includes any hotel, restaurant, canteen, house, room, tent, enclosures, road lane, bridge or other place to which the public have access. As far as exempted places for operation of the





Ordinance is concerned, the same are described in Section 5 of the Ordinance, which is reproduced as under:-

**"Exemptions.—** Nothing contained in section 4 shall apply in respect of --

(a) a canteen or kitchen maintained in a hospital for serving food to patients;

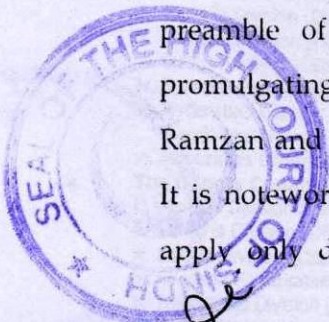
(b) A restaurant, or canteen, stall or wheel-barrow, or the holder of vending contract, within the premises of a railway station or in a train or a restaurant or canteen within the premises of an airport, seaport, or bus stand or in an aircraft;

(c) A kitchen or dining-car of a train; or

(d) a kitchen or canteen meant for children within the premises of a primary school."

In the majority of the instant petition, the plea is taken, since the hotel or restaurant of the petitioners are situated at a Bus Stop; therefore, the same come under the exemption given under Section 5 of the Ordinance. We are of the view that it is not the case. In Section 5 instead of Bus Stop, the word 'Bus Stand' is used which when read in the context, it appears that it does not mean the roadside Bus Stop or Layover, which is a point where a bus stops for boarding and alighting passengers during transition between terminus. A **bus stand**, also called a **bus bay**, or **bus stance**, is a designated parking location where a bus or coach waits out of service between scheduled public transport services. The words 'within the premises' used in clause (b) of Section 5 of the Ordinance, itself indicates that it is not the roadside bus stops or layovers but a separately designated place wherein parking areas for vehicles, waiting areas for passengers and other amenities are provided. Similarly, it is not sufficient to come under exemption that a canteen, restaurant or refectory is situated nearby a hospital.

6. From the bare perusal of sections 3, 4 and 5 as well as preamble of the Ordinance and the intention of legislature, by promulgating the Ordinance was to observe the sanctity of holy month Ramzan and show respect to the Muslims fasting during holy month. It is noteworthy that the prohibition provided within the Ordinance apply only during fasting hours and after the fasting hours all the





eateries may continue their activity and business but not during the fasting time. Since in all the petition, the places mentioned does not fall within exemption given under section 5 of the Ordinance, therefore, all the petitions are dismissed.

7. Nevertheless, the eateries and other business offering edible may seek permission from the concerned Deputy Commissioner if they are functioning within the premises of a railway station, airport, seaport or bus stand [a bus terminal situated within an enclosure] so also within the premises of hospital and primary school. All the District & Sessions Judges as well as Deputy Commissioners are directed to make sure that no restaurant, hotel beverage stall, tea shop should remain open at public place save to exemptions provided within section 5 of the ordinance. The concerned Deputy Commissioner is directed to ensure that no permission should be granted to a restaurant, hotel, beverage stall or any other business offering edibles, if the same does not fall within the exemption provided under section 5 of the Ordinance and if the petitioners consider that they are falling under section 5 of the Ordinance, they may approach the concerned Deputy Commissioner. It is further observed that the Deputy Commissioner cannot delegate this power and has to do a complete enquiry before granting such permission.

A copy of this Judgment be communicated to all the District & Sessions Judges and the Deputy Commissioners in Sindh Province, who shall circulate the same to their sub-ordinate officers for guidance.

Hyderabad.

Dated: 08.05.2019

CERTIFIED TO BE TRUE COPY

Sd/- Fahim Ahmed Siddiqui, Judge  
(8-5-2019)

Sd/- Muhammad Iqbal Kalhoro, Judge  
(8/5/2019)

Assistant Registrar (Writ)

THROUGH FAX ALSO

C.P.Nos.D-1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1446, 1447, 1448, 1450 & 1451 of 2019 (14 Cases) No. 3982. Dated the 10<sup>th</sup> day of May, 2019

Copy forwarded for information & necessary compliance in view of this Hon'ble Court's above mentioned order, to:-

**1. The District & Sessions Judges:-**

- Karachi Division (District East, West, South, Central & Malir).
- Larkana Division (District Jacobabad, Kashmore, Shikarpur, Larkana & Shahdadkot).
- Sukkur Division (District Sukkur, Ghotki & Khairpur).
- Shaheed Benazirabad Division (District Naushahroferoze, Sanghar & Shaheed Benazirabad).
- Hyderabad Division (District Hyderabad, Jamshoro, Dadu, Tando Allahyar, Badin, Thatta, Tando Muhammad Khan & Matiari).
- Mirpurkhas Division (District Mirpurkhas, Umerkot & Tharparkar).

**2. The Deputy Commissioners:-**

- Karachi Division (District East, West, South, Central, Korangi & Malir).
- Larkana Division (District Jacobabad, Kashmore, Shikarpur, Larkana & Shahdadkot).
- Sukkur Division (District Sukkur, Ghotki & Khairpur).
- Shaheed Benazirabad Division (District Naushahroferoze, Sanghar & Shaheed Benazirabad).
- Hyderabad Division (District Hyderabad, Jamshoro, Dadu, Tando Allahyar, Badin, Thatta, Tando Muhammad Khan, Sujawal & Matiari).
- Mirpurkhas Division (District Mirpurkhas, Umerkot & Tharparkar).

The Additional Advocate General Sindh, Hyderabad.

ASSISTANT REGISTRAR (WRIT)