

**IN THE HIGH COURT OF SINDH
AT KARACHI**

C.P No. D-2141 of 2020

Petitioner : Samira Mahamadi, in person.

Respondent : Province of Sindh, through Mr. Jawad Dero, AAG, along with Mr. Amanullah Zardari, Focal Person, Home Department, Government of Sindh. Mr. Kafil Ahmed Abbasi, DAG is also present on behalf of the Federation.

Date of hearing : 15.04.2020.

Present : Muhammad Ali Mazhar and Yousuf Ali Sayeed, JJ

JUDGMENT

YOUSUF ALI SAYEED, J - Vide this Petition under Article 199 of the Constitution, the Petitioner has assailed the steps taken by Government of Sindh to curtail the size of congregational prayers at mosques as part of the overall restrictions imposed on the movement and gathering of persons as a policy measure aimed at promoting ‘social distancing’ so as to curb the spread of the Covid-19 virus.

2. As it transpires, following the outbreak of the virus in the Province, Orders have been issued from time to time by the Government of Sindh in exercise of the powers conferred in terms of Section 3 of the Sindh Epidemic Diseases Act, 2014 (the “**2014 Act**”), to restrict public gatherings for advancing the aforementioned objective, and vide an Order dated 26.03.2020, a restriction was imposed in respect places of religious worship to the effect that only 3 to 5 designated persons such as the Pesh Imam, Moazzin and Caretaker) may form part of the prayer congregation, whereas members of the general public were left at liberty to offer their prayers at their respective homes, it also being duly clarified that the restriction on religious gathering was applicable in similar manner to all religions.

3. Whilst such restriction was initially imposed up to 05.04.2020, in terms of a subsequent Order of 02.04.2020, the same was extended by the Provincial administration up to 14.04.2020 and during the pendency of the Petition has since been further extended vide an Order dated 14.04.2020 up to 30.04.2020.

4. In mounting her challenge, the Petitioner has firstly assailed the vires of the 2014 Act, essentially seeking a declaration that the fundamental rights guaranteed under the Constitution cannot be abridged through the Regulations made by the Government of Sindh under the statute. Additionally, amongst the many related prayers advanced, it has also been sought, *inter alia*, that the 'Authorities' be (a) asked to 'explain' under which law a Friday congregation can be regarded as an 'unlawful Assembly' and people gathering with intent to worship defined as 'terrorists', and (b) also to "prove with substantial research based evidence that the current situation can be interpreted as a National Disaster". Furthermore, declarations have been elicited that no Religious Institution can be 'held hostage' to any Public Policy or Regulation of the Sindh or Federal Government; and to "ensure that all Religious Institutions be allowed to operate independently without any dictation or coercion by the 'Authorities', so that those Institutions can take measures as they deem fit to deal with any matters of common concern".

5. On an unrelated note, and without even impleading the Pakistan Electronic Media Regulatory Authority, it has also been disparately prayed that PEMRA be stopped from printing and circulation of all content regarding Disease outbreaks at Religious Institutions and Religious gatherings as it incites hate against Religious Institutions and Religious Gathering and is a cause of Common Injury to the Masses.

6. Turning at the outset to the 2014 Act, it is apparent from its preamble and very nomenclature that the statute seeks to consolidate the law relating to the prevention of the spread of dangerous epidemic disease in the Province of Sindh, with Section 3 thereof providing as follows:

3. (1) When at any time Government is satisfied that the Province or any part thereof is visited by, or threatened with an outbreak of any disease, Government, if it thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation, if any) shall be defrayed.

(2) In particular and without prejudice to the generality of the foregoing provisions, Government may take measures and prescribe regulations for the inspection of persons traveling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

(3) Government may, by general or special order, empower a Deputy Commissioner to exercise in relation to the district, all the powers under this section exercisable by Government in relation to the Province, other than the power to determine in what manner and by whom any expenses incurred (including compensation, if any) shall be defrayed.

(4) The exercise of powers delegated by Government shall be subject to such restrictions, limitations and conditions, if any, as may be specified by Government and to the control of, and to revision by Government.

7. Proceeding with her submissions, the Petitioner contended that the 2014 Act and Orders issued thereunder violated the fundamental right of citizens to practice their religion and manage religious institutions, to the extent that they curtailed the size of prayer congregations. She submitted that the 2014 Act and the Orders issued thereunder to that extent were liable to be struck down accordingly.

8. Furthermore, it was contended by the Petitioner that all the personnel of the respective law enforcement agencies specifically deployed at mosques be withdrawn and the law enforcement personnel otherwise generally deployed be restrained from preventing worshippers from attending congregation prayers. She contended that 'social distancing' was an anathema, which could not be countenanced in society as its implementation would undermine all religions. She stated that there was no need for such a measure as the Covid-19 virus was not a dangerous infection, contending that governments were unnecessarily exaggerating the risk for pursuing their own social and economic agendas. She submitted that as per a news report to be found on the website of the "Business Recorder" treatment for the virus had been devised by a research team at Dow University, hence for that reason alone there was no need for the Government to pursue the policy, especially not in respect of mosques.

9. Conversely, the learned AAG submitted that Covid-19 was an easily transmissible disease, and it was a scientifically recognized fact that until the advent of a cure or vaccine, the only means of curbing its exponential growth was to follow 'social distancing', which was now a policy being implemented on a global basis in an endeavour to stem further contagion. The learned AAG argued that the Orders issued from time to time by the Government of Sindh under the 2014 Act accordingly reflected a comprehensive set of measures devised to promote such an object, and emphasised that mosques had not in fact been closed and it was merely the size of the congregation that had been limited as a necessary and temporary step to combat the outbreak. He pointed out such a measure had been endorsed by several well renowned religious scholars of the day across the various recognised sects, who had given their Fatwas in favour of such a measure.

10. It was also pointed out and emphasised by the learned and AAG that the subsisting Order of 14.04.2020 was only in effect till 30.04.2020, and all measures mandated thereunder would be subject to review and revision based on a reappraisal of the circumstances prevailing at the given point in time. He pointed out that the Province of Sindh was not alone in implementing such protocols in respect of places of religious worship, which were being followed nationwide and similar measures were also in place in other countries, including the Kingdom of Saudi Arabia, where even the size congregations at the Masjid al-Ḥarām and Masjid an-Nabawī had been restricted. He pointed out that the restriction on congregational size had already been held to be *intra vires* by this very Bench on the touchstone of Article 20 of the Constitution in terms of the judgment rendered in Constitutional Petition Number D-2110 of 2020, pointing out that the fundamental right enshrined thereunder was subject to law and public order, and cited the wide media reporting of the further spread of the virus to support the contention that the prevailing circumstances necessitated continuation of the prevailing measures for the time being. Reliance was also placed on the judgment of the Honourable Supreme Court in the case of Lahore Development Authority through D.G. and others v. Imrana Tiwana and others 2015 SCMR 1739.

11. The learned AAG and DAG both also stated that in view of the impending onset of the Holy month of Ramzan, it had been decided in a meeting of the President of Pakistan, the Federal Minister for Interior and the Federal Minister for Religious Affairs and Interfaith Harmony that a further meeting of all the Governors of all the Provinces, President of AJK and members of the Ulema would be convened by the President on 18.04.2020 to discuss and devise proposals for congregation in mosques for regular daily prayers and for Taraweeh. They submitted that the continuation of the measures presently in place would be subject to the outcome of that meeting and could be subject to change accordingly.

12. Indeed, the statement made by the learned law officers as regards the future roadmap to be devised is borne out by the corresponding Press Release to be found on the website of the Press Information Department of the Federal Ministry of Information, Broadcasting, National History and Literary Heritage (http://pid.gov.pk/site/press_detail/13469), which reads as follows:

“PR No. 87

Islamabad: April 14, 2020

President Dr. Arif Alvi would convene a meeting of provincial governors and Ulema from all provinces, on Saturday (18th April), to chalk out proposals for masjid congregations in the Holy Month of Ramazan and Taraweeh Prayers etc. This was decided in a meeting, at the Presidency attended by Federal Minister for Interior, Brig(R). Ijaz Ahmad Shah, and Federal Minister for Religious Affairs and Interfaith Harmony, Pir Noor ul Haq Qadri, here today. The meeting agreed that the President would convene a meeting of all governors, President of AJK, and Ulema, through a video conference, for consultation and to seek their recommendations and guidelines about Taraweeh Prayers in view of the current Corona pandemic. The recommendations of Ulema would help in devising a comprehensive policy by the government. The meeting also appealed to the people to continue their generosity of Zakat & Khairat in supporting the social welfare that is done through the masjid and madaris in this holy month.”

13. Having heard the arguments advanced and examined the material on record, it is apparent that the Petitioner is labouring under several misconceptions, including (a) that the Covid-19 virus is not a dangerous infection, whereas the same has in fact been categorised as a global pandemic, with the rampant spread of infection and inordinate death toll being continually reported on an ongoing basis, (b) that a treatment is already available, when the research in that regard is apparently at a nascent stage and the one fact that has come to be established is that health services in even those developed countries that have failed to effectively implement ‘social distancing’ to curb dissemination of the virus have then been completely overwhelmed due to the rapidity with which the infection had spread, (c) that places of

religious worship exist beyond the pale of a temporal order and cannot be subjected to regulation, and (d) that considerations of public health and safety are subservient in the eyes of the law to religious observances.

14. That being said, with reference to the argument raised as to the constitutionality of the 2014 Act, it merits consideration at the outset that the fundamental rights guaranteed under Article 20 are expressed as being subject to law, whereas the 2014 Act is a valid piece of legislation, from a plain reading of which it is apparent that the same is intended to enable the Provincial administration to prevent the outbreak or the spread of a dangerous disease so as to prevent or curb an epidemic - an object that is *ex facie* in the public interest, and such measures as are legitimately taken under Section 3 to prevent the outbreak of a dangerous disease or curb the spread thereof following an outbreak would be in consonance with the principle enshrined in the maxim *salus populi est suprema lex*. In this regard, it is manifest from the very Orders issued under the 2014 Act that the decision to curtail the size of religious congregations at mosques is evidently not a standalone measure, but is part of a comprehensive policy to curtail unnecessary social interaction so as to curb the resultant spread of disease. The purpose of this temporary curtailment of congregational size is to curb the transmission of the Covid-19 virus, which has already been categorised as a global pandemic, and would not of itself offend Article 20, especially as citizens are not thereby deprived of their individual right of prayer. Whilst certain relaxations may indeed have been made since the initiation of the policy, the same appear intended to enable persons to fulfil their physiological needs in terms of earning a livelihood and/or ensure the continued availability of essential goods and services, whereas the lifting of restrictions on a non-essential front would only serve to unnecessarily increase the risk of infection, particularly when it is not yet known whether the rate at which infection is spreading has already peaked or is yet to reach its zenith.

15. When examining the aspect of whether a law is unconstitutional, it also falls to be considered that in the case of *Imrana Tiwana (Supra)*, the Honourable Supreme Court articulated certain well established rules that must be borne in mind by a Court in making such a determination, the same being as follows:

- “I. There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two;
- II. Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;
- III. A statute must never be declared unconstitutional unless its invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;
- IV. If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;
- V. The Court will not decide a larger constitutional question than is necessary for the determination of the case;
- VI. The Court will not declare a statute unconstitutional on the ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution;
- VII. The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;
- VIII. The Court will not strike down statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution;
- IX. Mala fides will not be attributed to the Legislature.”

16. Viewed through that prism, it is apparent from what has been discussed herein above that the Petitioner's challenge to the constitutionality of the 2014 Act and vires of the aforementioned Orders issued in terms of Section 3 thereof is misconceived.

17. Furthermore, as earlier observed, the prevailing decision to curtail the size of the congregation in exercise of powers under the 2014 Act is only an interim measure, which had originated with the endorsement of prominent Islamic Scholars and remains subject to review, based on the given circumstances. The prevailing Order of 14.04.2020 itself only remains in effect up to 30.04.2020, and as earlier observed, a meeting has already been convened at the highest level for 18.04.2020, to assess proposals for a future course of action by way of a uniform policy, and the seriousness of the matters to come under discussion is demonstrated by the fact that the President of Pakistan is himself to be at the helm. That being so, whilst moving forward, we trust that in honouring the social contract the chosen representatives of the people in Government will act in the best of their constituents, and we leave it up to their collective wisdom to devise and implement such protocols in concert with the executive functionaries of the State as may be best suited to combat the pandemic.

18. The Petition, being devoid of merit, stands dismissed accordingly.

JUDGE

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