

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-1695 of 2024

Date	Orders with signature of Judges
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PRESENT:

Mr. Justice Aqeel Ahmed Abbasi, CJ

Mr. Justice Abdul Mobeen Lakho, J

PRIORITY CASE:

1. For hearing of Misc. No.7704/2024 (stay)
2. For hearing of main case.

13.05.2024

M/s. Ali Tahir, Muhammad Hashim, Abdul Wahab Baloch and Liaquat Hussain Khan, Advocates alongwith Petitioner.

M/s. Miran Muhammad Shah, Addl. A.G. and Saifullah, Asst. A.G. Sindh alongwith Syed Mohsin Hussain Shah, Focal Person to Chief Secretary Sindh on Court Matters/AAG, Abdul Wajid Shaikh, Additional Secretary (Judicial), Muhammad Naveed Arain, Deputy Secretary (Judicial), Shahzad Fazal Abbasi, Deputy Commissioner East, Karachi and Dr. Farrukh Raza, SSP East, Karachi.

ORDER

1. Through instant petition filed by the General Secretary of Pakistan Tehreek-e-Insaf, Sindh, has sought following relief: -

1. *Declare that the Petitioner and his political party are entitled to the protection of Articles 16 and 17 have the right to assemble peacefully;*

2. *During the pendency of this Petition direct the Respondents to decide on the applications of the Petitioner.*

3. *In case of refusal by the Respondents to judicially review their decision/order and to set it aside and direct the Respondents to grant permission to the Petitioner and his political party to hold a public gathering on the 28th of April, 2024 at the ground in front of Mazar e Quaid.*

4. *Pass such other order or grant such relief as this Honorable Court may consider just, fit, and equitable in the peculiar circumstances of this case.*

2. On 16.04.2024, when the matter was fixed in Court, following order was passed: -

16.04.2024:

Mr. Ali Tahir, advocate for the petitioner.

1. *Granted.*
2. *Granted Subject to all just exceptions.*

3-4. Through instant petition, the petitioner, who is the General Secretary of Pakistan Tehreem-e-Insaf (PTI), Sindh, has expressed his grievance against denial of right to peaceful assembly and to hold a public gathering [Jalsa] by the District Management in violation of constitutional provisions and freedom as guaranteed under Articles 4, 9, 10, 14, 16, 17, 19 and 25 of the Constitution, which protect to the freedom of assembly and freedom of association to every citizen of Pakistan. According to learned counsel, the Deputy Commissioner, Karachi, East [respondent No.3], who inspite of repeated written request of the petitioner to allow holding of a public gathering [Jalsa], through letters dated 21.03.2024 and 27.03.2024 for 21st April 2024 at Mazar-e-Quaid and thereafter, on the advice of the concerned Deputy Commissioner in Bagh-e-Jinnah ground in front of Mazar-e-Quaid. However, neither any permission has been granted, nor any response has been received, therefore, petitioner was constraint to write another letter dated 01.04.2024 to hold a public gathering [jalsa] on 28.04.2024 but, no response whatsoever has been received. Per learned counsel, petitioner's political party has already been subjected to illegal actions of Election Commission during General National Elections held on 8th February 2024, whereas, similar treatment is being given to the PTI, which is one of the largest National Political Party of the country. It has been submitted by the learned counsel that no reason whatsoever has been communicated by the concerned Deputy Commissioner, or other Executive Authorities for not entertaining the petitioner's request to hold public gathering [Jalsa] and therefore, the largest political party of the country is being denied its democratic right to have access to the public and its supporters at large. In support of his contention, learned counsel for the petitioner has placed reliance in the case of Islamabad High Court Bar Association v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and others [PLD 2022 SC 511].

Let pre-admission notice be issued to the respondents as well as Advocate General Sindh, to be served through first three modes, for **19.04.2024 to be taken up at 10.00 a.m.**, when the concerned Deputy Commissioner, Karachi East [respondent No.3] shall be in attendance, whereas, reply/comments/objections, if any, shall be filed with advance copy to the petitioner. In the meanwhile, official respondents are directed to ensure that the applications filed by the petitioner, seeking permission to hold a public gathering [Jalsa] shall be processed in

accordance with law and if there is no legal impediment, then compliance be furnished on the next date of hearing.

Mr. Miran Muhammad Shah, Additional Advocate General Sindh present in Court, waives notice of instant petition, claims copy alongwith annexures and requests for time to seek instructions and to file comments, to which, learned counsel for the petitioner undertakes to supply the copy during course of the day.

Let copy of this order be supplied cover-in-hand to learned Additional Advocate General Sindh for onward transmission to concerned Deputy Commissioner/respondent No.3 to ensure compliance.

3. Pursuant to Court's order, when the matter was fixed in Court on 26.04.2024, following order was passed: -

19.04.2024:

Barrister Ali Tahir & Mr. Muhammad Hashim, advocate, advocate for the petitioner along with petitioner.

Mr. Saifullah, AAG along with Mr. Shahzad Fazal Abbasi, Deputy Commissioner, Karachi East.

Pursuant to Court notice, Mr. Shahzad Fazal Abbasi, Deputy Commissioner, Karachi East, has shown appearance, files a compliance report along with annexures and submits that the request of petitioner is being considered in accordance with law, whereas, report has been called from the concerned quarter to this effect. It will be appropriate to make contents of such report as part of the Court's order, the same reads as under:-

" It is submitted that this Hon'ble Court passed order dated 16.04.2024 in the instant petition, directed the Deputy Commissioner Karachi East (Respondent No-3) to file reply, comments & objection.

In this regard, it is submitted that Mr. Ali Ahmed Palh, General Secretary P.T.I, Sindh submitted application to this office for peaceful gathering at Mazar-e-Quaid ground on 28.04.2024. On receipt of application it was forwarded to (1) Senior Superintendent of Police, Karachi East (2) Resident Engineer/Secretary QMMB, Quaid-e-Azam Mazar Karachi East (3) The Assistant Commissioner, Ferozabad, Karachi East (4) The Assistant Commissioner, Jamshed Quarters, Karachi East vide letter No.DC/K/E/HVC/Leg.Br./563/2024 dated 15.04.2024 for specific comments/views, so that the permission may be accorded accordingly. (the copies are attached as Annexure A).

In view of the above it is prayed that the request of petitioner is under consideration and permission for ground gathering in favour of petitioner will be issued on the receipt of report from concerned offices according to law.”

Mr. Saifullah, learned AAG, however at this juncture, submits that in view of Section 4 of the Quaid-e-Azam’s Mazar (Protection & Maintenance) Ordinance, 1971, Mazar-e-Quaid, and the ground adjacent to Mazar-e-Quaid (Bagh-e-Jinnah), is the property of Federal Government, and also part of peripheral area of the Mazar. Learned AAG has also referred to Section 6 of the aforesaid Ordinance, which reads as follows:-

“Meetings, etc. prohibited. No person shall organise, convene or take part in any meeting or demonstration or procession or engage in political activity of any kind within the Quaid-e-Azam’s Mazar or within a distance of ten feet from the outer boundary thereof.”

According to learned AAG, since the subject ground (Bagh-e-Jinnah) is a part of Quaid-e-Azam’s Mazar, therefore, any procession, gathering cannot be held in terms of Section 6 of the Ordinance, 1971.

Such contention of the learned AAG is vehemently opposed and denied by the learned counsel for the petitioner, who submits that such interpretation of Section 6 is totally misconceived in fact and law for the reason that the ground (Bagh-e-Jinnah) is not the part of Mazar-e-Quaid, nor it is within a distance of ten feet from outer boundary thereof. Moreover, according to learned counsel, concerned Deputy Commissioner has not raised any such objection, whereas, similar permissions have been accorded to all the political parties without any objections whatsoever. Learned counsel for the petitioner has also filed statement along with annexures to show that almost all the political parties have held procession, rallies and jalsa in Bagh-e-Jinnah, copy thereof has been supplied to the learned AAG. It has been prayed by the learned counsel for petitioner, that since no such excuse has been given in the compliance report furnished by the Deputy Commissioner, who is present in Court, whereas, the contention of the learned AAG is totally misconceived, therefore, respondents may be directed to accede to the request of the petitioner in accordance with law at earlier as unnecessary delay has already occurred. Contention of the learned counsel for petitioner on the face of it appears to be correct as the Deputy Commissioner Karachi East present in Court has not raised any such objection and has stated that the request of petitioner is being considered in accordance with law, however, requested for time to do the needful, therefore, we are adjourning this matter to 26.04.2024. In the meanwhile, it is expected that needful shall be done in accordance with

law, and compliance be furnished before the next date of hearing with advance copy to learned counsel for the petitioner.

4. Pursuant to Court order, compliance/statements have been filed by the Deputy Commissioner, Karachi and the Focal Person for Court Matters, Home Department, Sindh, alongwith annexures, which are taken on record, copies supplied to the learned counsel for the Petitioner. A Confidential Report dated 13.5.2004 in sealed envelope has also been submitted by the Deputy Commissioner, Karachi East, which has been perused as well.

5. From perusal of the statements/Reports and the confidential report filed by the respondents as referred to hereinabove, we are of the opinion that no substance or legal ground has been mentioned in the said reports which could justify withholding permission to the Petitioner for holding public Rally / Jalsa near Mazar-e-Quaid or Bagh-e-Jinnah as requested by the petitioner, more particularly, when reportedly, two political parties have already held Public Rallies / Jalsa near the Bagh-e-Jinnah and Corridor-III, whereas, last one was held on 02.05.2024 at Corridor-III within close vicinity of Mazar-e-Quaid and Bagh-e-Jinnah. It has been noted that similar reports, apprehending the security threats were also filed on 19.04.2024, which were neither convincing nor supported by any material, therefore, another opportunity was given to the respondents to submit final report after seeking impact of law enforcement agencies and by associating the petitioner, however, instead of taking any material steps to neutralize the threat inspite of expiry of the period as mentioned in earlier report to this effect.

6. In view of hereinabove facts and circumstances of this case, we are of the view that no reasonable legal justification has been furnished by the respondents to deny petitioner's political party (PTI) to hold a peaceful public gathering (Jalsa) at Bagh-e-Jinnah or within its vicinity, whereas, no material whatsoever has been confronted to petitioner or placed before this Court to substantiate the apprehension of security breach or threat of some untoward incident by banned organizations or

terrorists groups to sabotage the public gathering (Jalsa) of any political party. It appears that the petitioner is being discriminated against and denied fundamental right to hold public rally/Jalsa in violation of Articles 16 and 17 of the Constitution as well as the judgment of the Hon'ble Supreme Court of Pakistan in the case of **ISLAMABAD HIGH COURT BAR ASSOCIATION v. FEDERATION OF PAKISTAN AND OTHERS [PLD 2022 SC 511]**. Accordingly, instant petition is disposed of with direction to the Deputy Commissioner, Karachi East to call a meeting of all the stakeholders, including the petitioner or his representatives, within two days from the date of receipt of this order to resolve the matter amicably and accord permission to hold Public Gathering (Jalsa) at the above-mentioned ground / area after compliance and observance of codal formalities while addressing security concerns. It is expected that the decision shall be taken within a week thereafter, however, without any discrimination and keeping in view past practice to this effect. It is further observed that if permission to hold Public Gathering (Jalsa) at Bagh-e-Jinnah, somehow involves serious security concerns, some reasonable alternate venue agreeable to the petitioner may be taken into consideration.

7. Instant petition is disposed of alongwith pending misc. application in the aforesaid terms. The compliance of Court's order be submitted to this Court within ten (10) days from the date of this order through MIT.

CHIEF JUSTICE

JUDGE

Naseem
Farhan/PS