

Form No.HCJD/C-121
ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.56980 of 2023

Sarwar Taj.

Versus

Government of the Punjab,
etc.

S.No.of order/ Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties' counsel, where necessary.
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12.09.2023 Petitioner in person.
Mr. Amar Sana, Additional Advocate General, Punjab.

The petitioner has made the following prayer:-

“Under the circumstances it is most respectfully prayed that the respondents may kindly be directed to decide the application of the petitioner and to allow him to devour/eat poison in the prescribed manner before the audience and the expertise in the said field for the benefit of public at large to meet the ends of justice, equity and fair-play.”

2. The petitioner has moved an application before the respondents with the contents as follows: -

‘گزارش ہے کہ اللہ تعالیٰ نے مجھے نئے علم سے نواز رکھا ہے اور میں اپنے نئے علم کو ظاہر کرنا چاہتا ہوں۔ جناب آپ مہربانی فرمائیں مجھے موجی دروازہ کی گراؤنڈ میں تجربہ کے لیے جگہ کی اجازت فرمائیں اور اگر اللہ نہ کرے میرے تجربہ کرنے میں میری موت ہو جاتی ہے تو اس کا کوئی ذمہ دار نہ ہو گا اور اللہ پاک نے مجھے زبردست حکمت سے نواز رکھا ہے اور میں حکمت سے زبر کے پانی کا بہرا ہوا کلاس پی جاؤں گا اور ان شاء اللہ تعالیٰ مجھے کچھ بھی نہ ہو گا اور اس کے بعد میں گورنمنٹ آف پاکستان کو کینسر کے علاج کی دوائی کافارمولہ فی سبیل اللہ فرایم کر دوں گا اور اس کے علاوہ میں تمام فارمولے جن سے اللہ تعالیٰ نے مجھے نواز رکھا ہے وہ پاکستان کی ترقی کے لیے پیش کر دوں گا اور فارمولوں کی فہرست درخواست کے ساتھ منسلک ہے۔

جناب عالیٰ! سائل آپ سے اپیل کرتا ہے کو جلد سے جلد مجھے موجی دروازہ گراؤنڈ میں تجربہ کرنے کی اجازت فرایم کرنے کا حکم صادر فرمائیں۔ آپ کی عین نوازش ہو گی۔’

3. It is contended by the petitioner that in his aforementioned experiment, if he dies, no one would be responsible for his death. If he remains alive, the Government be directed to follow his prescription to cure cancer patients to avoid exorbitant medical costs for the treatment and cure of such patients. According

to him, the petitioner has secured these prescriptions from the wisdom of saints which he believes is the best way for curing cancer patients.

4. Learned Law Officer has questioned maintainability of the tiled Writ Petition.

5. Heard.

6. Prayer of the petitioner cannot be allowed for the following reasons:

- (i) A writ in the nature of *mandamus* in terms of Article 199(1)(a)(i) of the Constitution of Islamic Republic of Pakistan, 1973 ('Constitution') visualizes issuance of direction, *inter alia*, to a person performing functions in connections with affairs of the Federation, a Province or a Local Government to do what law requires him to do. It has been held by the Supreme Court of Pakistan in the case of *The Secretary Punjab Public Service Commission, Lahore and others v. Aamir Hayat and others (2019 SCMR 124)* that jurisdiction of the High Court under the said provision is limited to ensuring that the state functionaries do what they are required by law to do. Unless an act or omission of the state functionary falls within the said parameter, High Court would be overstepping its jurisdiction in issuing any direction. The Petitioner failed to point out any provision in law conferring authority upon Government of the Punjab or the District Administration to grant the permission sought by him.
- (ii) Although attempt to commit suicide has been decriminalized with effect from 28th December 2022 when the offence under section 325 of the

Pakistan Penal Code, 1860 ('PPC') was omitted through Criminal Laws (Amendment) Act, 2022 (Act XXXVII of 2022), however, the offence of negligent conduct with respect to poisonous substance, as prescribed in section 284 of the PPC, remains on the statute book in terms whereof *whoever does with any poisonous substance, any act in a manner so rash or negligent or negligent as to endanger human life, or to be likely to cause hurt or injury to any person or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to three thousand rupees, or with both.* Hurt caused by corrosive substance, as prescribed in section 336A of the PPC, is another offence in terms whereof *whoever, with the intention or knowingly causes or attempts to cause hurt by means of a corrosive substance or any substance which is deleterious to human body when it is swallowed, inhaled, comes to contact or received into human body is said to cause hurt by corrosive substance.* In the statutory explanation, "corrosive substance" for the said offence has been defined to include *poison.* This Court cannot issue the direction sought where the same carries potential risk of commission of any offence in the statute book.

(iii) Schedule II of the Drug Regulatory Authority of Pakistan Act, 2012 ('DRAP Act') specifies prohibitions which constitute offences punishable under Schedule III, as mandated by Section 27 of that Act. Sub-sections (xxxvi) & (ii) of Section 2 of the DRAP Act respectively define "*therapeutic goods*" to include drugs or alternative medicine or medical devices or biologicals or other related products as may be notified by the Authority and "*alternative medicine*" to mean a product used exclusively in Homeopathic, Unani, Ayuverdic, Biochemic, Chinese or other traditional system of treatment. Section B of Schedule II prescribes offences for the control of advertisement. It postulates that *no person shall himself or by any other person on his behalf advertise, except in accordance with such conditions as may be prescribed*, (a) *any therapeutic good*; (b) *any substance used or prepared for use in accordance with the Ayuverdic, Unani, Homeopathic, Chinese or Biochemic system of treatment or any other substance or mixture of substances as maybe prescribed*; (c) *any remedy, treatment or offer of a treatment for any disease*. For the purpose of the aforementioned prohibition, an explanation has been enacted to define "*advertise*" to mean to make any representation by any means whatsoever for the purpose of promoting directly or indirectly the sale or disposal of it therapeutic good, is substance or a mixture of substances, remedy or a treatment except the display of signboards for the clinic, a dispensary or a

hospital or set other institution offering treatment.

What the petitioner seeks in relief in the instant case is surely a public representation of his act of consumption of a substance that he believes would not cause his death but may cure and recover cancer patients. The relief sought by the petitioner, if allowed, is not only likely to be in violation of these prohibitions constituting offences but perpetuate anarchy in the field of drugs.

(iv) The poisons Act, 1919 has been enacted to regulate importation, possession and sale of poisons. Section 4 of that legislation confers power upon the Provincial Government to regulate possession of any specified poison in any local area and in that regard, it also prescribes an offence punishable with imprisonment for a term which may extend to one year or fine specified therein. Section 5 of the said Act draws a presumption that any substance specified as poison in a rule framed under section 8 of the Poisons Act is deemed to be a poison for the purpose of that Act. Additionally, storage, use in drugs and labelling of poisonous substances is regulated by the Drugs Act, 1976 and rule 20 of the Punjab Drug Rules, 2007. Issuance of the direction prayed for may also have the effect of undermining the role and authority of the regulator under the aforementioned laws.

(v) On Court query, the petitioner confirmed that he was not himself a cancer patient, therefore, it is

not a case of *euthanasia* i.e. the practice of ending the life of a terminally ill patient to limit his or her experience of great pain and suffering. In some countries of the world including India, there is judicial acceptance of a degree of *euthanasia* in recognition of persons' fundamental right to die with dignity. Several directions in that regard were issued by the Supreme Court of India in the case of Common Cause (A Registered Society) v. Union of India and another [(2018) 5 SCC 1], some of which were subsequently modified vide order dated 24.01.2023 on Miscellaneous Application No.1699 of 2019 in the aforementioned case to simplify the procedure for executing living will. Be that as it may, Islam is the State religion of Pakistan, which is manifest from Article 2 of the Constitution. Besides an overwhelming majority of Muslims, a sizeable population of Pakistanis consists of non-Muslims. If at all and how far the plea of *euthanasia* is tenable in Pakistan in the context of provisions of Articles 2A, 14 and 20 of the Constitution is not a matter in issue here, therefore, it would not be appropriate for this Court to delve into that question. However, when the petitioner is not a terminally ill patient and the permission is not being sought to limit his experience of great pain and suffering rather for the purpose of life risking experiment to create public spectacle, no direction for the grant of such permission is warranted by law. Needless to observe here that such permission, if issued, may

disturb public order and encourage others to indulge in such unlawful practice.

(vi) It is well settled that the exercise of jurisdiction under Article 199 of the Constitution is discretionary. The discretionary nature of such remedy is not only manifest from the text of Article 199 but also the precedents of the Supreme Court of Pakistan in the cases of *Rehmatullah v. Hameeda Begum* (1986 SCMR 1561); *Member (S & R) / Chief Settlement Commissioner, Board of Revenue Punjab, Lahore and another v. Syed Ashfaque Ali and another* (PLD 2003 SC 132). It would be inappropriate for this Court to issue any direction to the respondents to allow the petitioner relief qua publicly consuming any substance which is not registered with the Drug Regulatory Authority of Pakistan after trials and evaluation of its safety and efficacy when the same not only constitutes violation of law but criminal offences.

(vii) The instant petition appears to be more of a publicity stunt behind the veil of public interest, which cannot be entertained and is liable to be dismissed outrightly. Reliance in this regard is placed on the case of *Dr. Akhtar Hassan Khan v. Federation of Pakistan* (2012 SCMR 455).

7. For the foregoing reasons, this writ petition is dismissed in *limine* being devoid of any merit.

(RAHEEL KAMRAN)
JUDGE
APPROVED FOR REPORTING

JUDGE