

Stereo HCJDA-38
JUDGMENT SHEET
LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.15163/2023

Khawar Mumtaz, etc.

Versus

Deputy Commissioner, etc.

JUDGMENT

Date of Hearing:	07.03.2023
Petitioners by:	M/s Sabahat Rizvi, Advocate, Asad Jamal, Advocate and Zeeshan Zafar Hashmi, Advocate.
Respondents by:	Ch. Tanveer Akhtar, Addl. Advocate General alongwith Rafia Haider, Deputy Commissioner, Lahore, Sarfraz Virk, SP, Civil Lines, Lahore, Malik Taimoor, DSP(HQ) Security, Iqbal Najam, DSP, Legal Operations, Lahore and SHO, Police Station, Civil Lines, Lahore.

Anwaar Hussain, J:- This petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (“**the Constitution**”) is directed against impugned order dated 01.03.2023, whereby permission to the petitioners to hold ‘Aurat march’, at Nasir Bagh, Lahore on 08.03.2023, on the eve of International Women’s Day, has been declined for two-fold reasons. Firstly, that the activities involve display of controversial cards and banners for awareness of women’s rights and secondly, *Jamaat-e-Islami* (Women’s/Student Wings) has also announced a program against the said ‘Aurat march’, on the same day.

2. Learned counsel for the petitioners submit that No Objection Certificate (“**NOC**”) was sought, from respondent No.1, by

submitting a proposed program of holding a lawful and peaceful march and refusal of such permission on the reasons and grounds recorded in the impugned order are not sustainable in terms of the constitutional guarantees in general and the right to hold a peaceful assembly in particular. Add that the jurisprudence developed on the legal point involved encourages such march that creates awareness in public about women's rights and place reliance on cases reported as "Imran Javed Aziz and others v. Federation of Pakistan through Secretary, Ministry of Interior and others" (PLD 2020 Islamabad 302), "Allah Rakha Mehmood Mughal alias A.R. Mehmood Mughal v. Government of Punjab and others" (PLD 2020 Lahore 515) and "Munir Ahmad v. Federation of Pakistan and others" (PLD 2020 Lahore 528).

3. Conversely, learned Law Officer along with Rafia Haider, Deputy Commissioner, Lahore as well as Sarfraz Virk, S.P Civil Lines, Lahore are in attendance and submit that there were two applications for grant of NOC to hold a march/assembly at Nasir Bagh; one by the petitioners, which was filed on 10.02.2023 and the second was filed on 28.02.2023 by *Jamaat-e-Islami*. However, first meeting of the District Intelligence Committee ("DIC") was held wherein it was apprehended that possibility of law and order situation may arise as a result of potential conflict between the two groups, hence, the NOC was refused to the petitioners through the impugned order and in the second meeting of the DIC, the NOC was also refused to the other group and at present, nobody is allowed to hold the assembly at Nasir Bagh. Add that there has been third DIC meeting as well on the strength of which it was concluded that it will be against the public interest to allow such permission to either of the parties. Further add that historically, it is *Jamaat-e-Islami* who has been allowed to have an assembly at Nasir Bagh in preference to the other groups, therefore, the permission could not be given to the petitioners. When confronted with, learned counsel for the petitioners submit that

the entire process through which the intelligence reports are prepared/gathered is non-transparent as the petitioners are not properly associated with any such assessment of threat. Further contend that assigning proposed venue to *Jamaat-e-Islami* on the basis of any conventional/historical association with the said venue is also without any lawful basis.

4. Arguments heard. Record perused.

5. The core issue that requires determination by this Court is to examine whether the reasons given in the impugned order for refusal to grant permission to hold the proposed march at Nasir Bagh, Lahore are sustainable inasmuch as it is mere apprehension on part of the respondents that the said permission would trigger law and order situation as another stake holder (*Jamaat-e-Islami*) has also announced a counter march on the same date and at the same place although it is admitted position that the application for the permission filed by *Jammat-e-Islami* was later in time, and the same has been also declined.

6. Before rendering the opinion, it is in fitness of things to analyze the importance of the day i.e., 8th March. In 1975, United Nations declared 8th March as an official/formal International Women's Day, which aims to help nations eradicate discrimination, and also confer social, political, economic, cultural as well as equal protection of law to the women folk. Pakistan is a signatory to 'Conventions on the Elimination of All Forms of Discrimination Against Women' ("**the CEDAW**") which was adopted in the year 1979 by United Nations General Assembly. Under the CEDAW, like other signatories, Pakistan is obligated to encourage parity and eliminate inequality between women and men in all walks of life. It is pertinent to point out that the Constitution, through its preamble, spells out the collective will of the people of Pakistan as to how the people wanted

them to be ruled by their chosen representatives. The preamble of the Constitution provides as under:

“Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;”

The above-quoted excerpt from the preamble of the Constitution clinches the umbral core of the polity of the State. In fact, the principles of freedom, equality, tolerance and social justice form the very fabric of constitutional democracy. Tolerance with the way of life that may not be agreeable to one’s viewpoint not only makes the co-habitation of conflicting and/or not-so-agreeable viewpoints possible but also is essential to trigger and generate the social engagement and discussion in the society which is essential and fundamental for social and political evolution of any society. Similarly, Article 16 of the Constitution provides freedom of assembly to the citizens of Pakistan *albeit* subject to any reasonable restrictions imposed by law, in the interest of public order. Article 16 is reproduced hereunder:

“16. Freedom of assembly. Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.”

Bare perusal of the above quoted provision brings forth that right to assemble is fundamental right of citizens of Pakistan, which is subject to reasonable restrictions imposed by law, in public interest.

7. As regards the rights of the women folk of the society, no religion has empowered the women as Islam which can be gauged from the fact that Islam at its very advent, granted rights to them which could not have been even imagined in the Arabian Peninsula at that time. Islam has forbidden oppression in general and oppression of the woman, orphans and destitute in particular. Islam has also not allowed any one to bully, harass, subdue or persecute any person in

the world and precisely for this reason, many of the verses of the glorious Quran relate to the prohibition of oppression (*dhulm*) in any form, whether it is social, political, economic, or in any other guise. Islam came to end oppression. To restore equality and justice to the community, Allah Almighty revealed surah *Nisa* and surah *Talaq* focusing on women's issues. Islam came to liberate women from oppression and gave multiple rights to them including the right to be financially independent; to trade and earn; to have their own property independent from their husbands; entitled to a *mahr* upon marriage and have their prescribed share in inheritance and in this manner granted legal personhood to women.

8. Similarly, the Constitution contains a long list of fundamental rights applicable equally to men and women but some are designed specifically to protect women's rights. Article 32 of the Constitution makes special provisions for the representation of women in local Government whereas Article 34 thereof directs the state to take appropriate measures to enable women to participate in all spheres of life and social activities. Moreover, the women make up more than 50 percent of our demographic mix and their contribution to the socio-economic life as mainstream citizens is essential and fundamental for socio-economic advancement. More often than not, it is not only awareness spreading campaign but also an attempt to wriggle out of certain socio-political perceptions that civil society take up the gauntlet to break open those perceptions by rallying the public voice against those perceptions. This certainly gives birth to socio-political friction in the society particularly between and/or among rival perceptions and social convictions. This social friction lies at the heart of evolution of human civilization and of every society in the absence of which the society becomes rotten and rusty in terms of socio-political advancement as forces of friction are not even allowed to straighten out and iron out their differences in the society. Similarly, there is no doubt that women rights and awareness about their rights is

considered essential for women to make positive contributions to socio-economic and political advancement of our society. The modus operandi of one group to raise such awareness could be objectionable for the other and *vice versa*. However, it has to be our social and national consensus that women are to be assimilated into mainstream socio-economic and political life.

9. Having above referred constitutional and legal position in sight, needless to mention that both, organizers of the *Aurat* march and the *Jamaat-e-Islami*, are part of our society and aim at raising awareness among women folks of the society, *albeit* in accordance with their own perspective. It is the society which should be left to be its own judge instead of smothering a particular voice. To borrow Hegelian philosophy, it is the thesis interacting with antithesis which leads to synthesis. Hence, if no antithesis is even allowed to come out, social synthesis would remain an elusive dream. Hence, societal engagement must be encouraged. Similarly, the friction, if any, underlying the ‘*Aurat* march’ and counter march by an established religious political party, at national level, is a form of social and societal engagement and it is their engagement at societal level which can smoothen out the engagement rather than smothering one approach which would always keep the forces of friction working or remaining latent in the society without provision of any out-let to those forces of friction. Nothing can be more fatal socially to a society than such forces of friction having no vent out. Therefore, it is observed that one has to respect both approaches and neither the proponent of the *Aurat* march nor the stakeholders who have made an announcement, as per the impugned order, to hold parallel march, have right to act against the law and indulge into confrontation and violence. Thus, while the right to assemble is a constitutionally guaranteed right, the same has to be exercised in a manner that it does not undermine the public order. The petitioners, therefore, are obligated to exercise this right through the prism of public order. Hence, slogans at a peaceful protest can always

be better worded to avoid provocation, hate or outrage. During the course of arguments, the petitioners present in person along with their counsel submit that they do realize the same and have assured that the proposed *Aurat* march will be conducted in consistency with the norms of decency and parameters prescribed by the law as the proponents of the *Aurat* march are also well aware of Article 2 of the Constitution, which contemplates that Islam is to be the state religion as well as Article 2-A thereof that makes Quran and Sunnah as the supreme law of the country. Therefore, like other citizens of Pakistan, the organizers and participants of *Aurat* march as well as the other stake holders must work towards a more tolerant and democratic society and it is here where the duty of the government lies to ensure adequate and fool-proof security arrangements to the participants of a peaceful demonstration/march; be that of the petitioner or the *Jammat-e-Islami* (Women Wing/Student Wing).

10. On a pointed question to the Deputy Commissioner, Lahore as to whether mere fact that one group has announced its “gathering” or “march” with conflicting views can be made basis of refusal to the other group to stage their procession or rally, she could not come up with a plausible answer. There is no doubt that the executive limb of the state is obligated to ensure maintenance of the law and order in the province/country and is the best judge to regulate a gathering and/or procession but the same has to be measured in proportionate relation to the fundamental rights of the citizens to assemble and there should not be any discrimination while granting or refusing such NOC. It cannot be countenanced that a perceived and/or apprehended conflict between the two groups could be made an excuse to completely refuse the right to assemble to both the groups. This would amount to either abdication of the executive functions by the state machinery to provide security to its citizens or failure and disability of the executive to manage the issue, in a fair and non-discriminatory manner. Instead of absolute refusal of permission to the petitioners, the same could

have been managed by engaging both the groups and by getting undertaking from them that no one would resort to violent acts and/or confine themselves or their acts to exercise of their rights guaranteed under the Constitution in a manner which are not provocative or socially obscene. This is where the managerial skills of executive could have been brought to use, to ensure efficient and constitutionally-compliant management of the event/issue, which seems to have been abdicated that triggered the filing of the present petition.

11. In view of the above discussion, this Court is of considered opinion that restrictions on the right to assemble can be imposed under the law which ought to be based upon public interest. In the instant case, the absolute restrictions/ban imposed on the “*Aurat march*” is not tenable inasmuch as the reasons put forth by Respondent No.1 for the refusal of permission to hold *Aurat march* are not only implausible but also against the spirit of Article 16 of the Constitution. Ironically, not only the petitioners have been refused NOC to hold “*Aurat march*”, *Jammat-e-Islami* has also been refused any such NOC. This belies logic as both the groups/segments of the society have been refused NOC and denied right to assemble on the perceived and apprehended perception and threats that is against the constitutional dictates. Therefore, **the impugned order cannot sustain and is, thus set aside.**

12. However, while right of peaceful assembly is the guarantee conferred by the Constitution, the power to regulate the same, in the interest of public at large, through reasonable restrictions under the law has also been vested in the executive. During the course of arguments, learned counsel for the petitioners also could not refute that the respondents have the power to regulate the right of the petitioners to assemble, keeping in view the public safety and law and order situation and sought time to chalk out a mutually agreeable route for the proposed *Aurat march* and during the latter half of the

Court's hours when the matter was taken up again for hearing, the parties have come with a consensus that the proposed Aurat march will start from NADRA Office, Shimla Hill/Egerton Road, Lahore and will end at Flatties Chowk, Lahore and the proceedings would be concluded between 02:00 p.m. to 06:00 p.m., on 08.03.2023. For this purpose, the terms have been settled and submitted in the Court, which are being made part of this order and read as under:

قواند وضوابط عورت مارچ، 8 مارچ 2023

2018ء سے اب تک منعقد ہونے والے عورت مارچ کے پروگرامز میں شریک خواتین کی طرف سے پکڑے گئے پلے کارڈ پر مستنازع تحریروں اور تصویروں کی وجہ سے یہ پروگرام کافی مستنازع ہو چکا ہے اور سوشل میڈیا پر متعدد مذہبی، سماجی، سیاسی جماعتوں نے ان ریمارکس پر شدید تنقید کی اور اس سال بھی انہی جماعتوں کی طرف سے شدید احتجاج کا اعلان کیا گیا ہے۔ لہذا اس مارچ کے انعقاد کے لئے آپ کو درج ذیل شرائط پر NOC جاری کیا جائے گا۔

1. دوران مارچ ایسے کسی پلے کارڈ، پوسٹر یا سینر کا استعمال نہ کیا جائے گا جس پر کوئی ایسی تحریر، خاکہ، فقرہ یا اشارہ ظاہر کیا جائے جو مستنازع ہو اور آئین پاکستان کی روح کے منافی ہو اور نہ ہی کوئی ایسا نعرہ (Slogan) لگایا جائے گا جو کسی خاص فرد، گروہ، جنس، جماعت، مذہب یا طبقہ کے خلاف نفرت انگیزی کا باعث ہو۔ اگر کوئی ایسا پلے کارڈ / سینر یا پوسٹر اس پروگرام میں آجائے تو پروگرام انتظامیہ ضلعی انتظامیہ کے ساتھ مل کر اس کو ریوڈ کریں گے۔ خلاف ورزی کی صورت میں تعزیرات پاکستان و دیگر متعلقہ قوانین کے تحت کارروائی عمل میں لائی جائے گی۔
2. پروگرام آرگنائزر NOC حاصل کرنے سے قبل پروگرام میں خطاب کرنے والے افراد کی فہرست مہیا کریں گے۔
3. پروگرام کی سوشل میڈیا پر لائیو کوریج بذریعہ انتظامیہ اکاؤنٹ کے دوران اگر کوئی مستنازع بات / تصویر یا تحریر شیئر کی گئی تو اس کی تمام تر ذمہ داری پروگرام انتظامیہ پر عائد ہوگی اور خلاف ورزی کی صورت میں Prevention of Electronic Crimes Act (PEC) 2016 کے تحت کارروائی عمل میں لائی جائے گی۔
4. عورت مارچ میں اگر کوئی ایسا مستنازع شخص اس پروگرام میں شامل ہو جائے تو پروگرام انتظامیہ کی ذمہ داری ہے کہ وہ ایسے شخص کو پروگرام سے نکال دیں۔

5. دوران پروگرام مائیک اور لاؤڈ سپیکر کے استعمال کی مکمل ذمہ داری انتظامیہ پروگرام کی ہوگی۔ لاؤڈ سپیکر کے غلط استعمال کی صورت میں انتظامیہ پروگرام کے خلاف قانونی کارروائی عمل میں لائی جائے گی۔
6. لاہور ہائی کورٹ کے حکم کے مطابق مال روڈ کے اوپر کسی بھی قسم کی ریلی کی اجازت نہ ہے لہذا عورت مارچ کے شرکاء کسی بھی صورت میں مال روڈ پر اکٹھے نہیں ہوں گے۔
7. گاڑیوں کی پارکنگ مال روڈ پر نہ ہوگی بلکہ ضلعی انتظامیہ کی طرف سے پارکنگ کیلئے مختص کی گئی جگہ کو استعمال کیا جائے گا۔
8. تمام پروگرام کی ویڈیو ریکارڈنگ کی جائے گی اور انتظامیہ ریلی اسے منراہم کرنے کی پابند ہوگی۔
9. متذکرہ بالا شرائط کی خلاف ورزی ہونے پر پروگرام انتظامیہ کے خلاف قانونی کارروائی عمل میں لائی جائے گی۔

Learned counsel for the petitioners have categorically stated that they are not inviting any speaker at the event and assure that if any participant while sharing his/her experience, regarding oppression, makes any controversial narration of an event, the organizers of the *Aurat* march will ensure that said person does not continue with his/her speech. The petitioners are obligated to abide by the undertaking recorded in this order whereas the respondents are directed to ensure the safety of the participants as well as the general public, during the proposed march.

13. **Disposed of** in the above terms.

14. Before parting with, efforts of the learned Law Officer, the Deputy Commissioner, Lahore and S.P. Civil Lines, Lahore as well as learned counsel for the petitioners in reaching an amicable settlement are appreciated.

(Anwaar Hussain)
Judge

Approved for reporting

Judge