

Stereo.HCJDA 38.
JUDGMENT SHEET.

LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI.
JUDICIAL DEPARTMENT

W.P.No.3256 of 2022.

Sheikh Muhammad Hafeez

Versus.

Federation of Pakistan, etc.

JUDGMENT.

Date of hearing: **07.02.2023.**

Petitioner by: M/s Israr-ul-Haq Malik, Arsalan Rasheed Qureshi and Asad Mahmood Abbasi, Advocates.

Respondent No.1 M/s Malik Muhammad Siddique Awan, by: Additional Attorney General, Sajid Khan Tanoli, Deputy Attorney General and Arshad Mehmood Malik, Assistant Attorney General.

Respondents No.2 to 7 by: M/s Malik Amjad Ali, Additional Advocate General, Mirza Asif Abbas, Assistant Advocate General and Qaiser Abbas Shah, Assistant Advocate General for Punjab with Liaqat Ali Chattha, Commissioner Rawalpindi, Syed Shahzad Nadeem Bukhari, CPO, Taimoor Khan, CTO, Ms. Zunera, S.P, Ms. Shazia, DSP (Legal) and Waqas, S.P, Potohar.

Respondents No.8 Mr. Faisal Fareed Ch., Advocate. and 9 by:

Mirza Viqas Rauf, J. This single judgment shall govern three constitutional petitions i.e. W.P.No.3256 of 2022, 3253 of 2022 and 3258 of 2022 as all these petitions stem out from a common incident and canvassing similar questions of law and facts and having similar background as well.

Factual Background.

2. The Long March (as given the name as “Haqeeqi Long March”) started on 28.10.2022 from Liberty Chowk Lahore under the patronage and

leadership of Imran Ahmed Khan Niazi (respondent No.9), the Chairman of one of the largest political party, Pakistan Tehreek-e-Insaf (hereinafter referred to as “PTI”), on the basis of some political demands to be fulfilled by the Federal Government. The Destiny of the Long March was from Liberty Chowk Lahore to Islamabad, the Capital Territory. The participants of the Long March and their leadership when arrived at Wazirabad on 03rd November 2022, they were attacked by unknown assailants with firearms, one of which was arrested at the spot. Unfortunately, in the said incident, one citizen had lost his life and some got injured, including their Chairman. This incident resulted into a change in the object of Long March and also disrupted its normal course. Though a First Information Report (hereinafter referred to as “F.I.R”) was registered at the relevant police station qua the incident but it created panic in the camps of “PTI” as the leadership and workers are of the view that said “F.I.R” did not capture the actual facts and it is not in line with their expectations. This prompted the workers and second row of “PTI” leadership generally throughout Pakistan and more specifically within Rawalpindi region to hold demonstrations which includes sit-ins on entry and exit points of Rawalpindi as well as Motorway Interchange of Rawalpindi-Islamabad. The sit-ins started from 05.11.2022 and continued till 11.11.2022 made it impossible for the citizens to enter or move out from the city through any means of transport. Those travelling to Islamabad from Murree Road were facing inconvenience while people going to offices and other destinations had been facing traffic jams in large numbers. Public and goods transport remained closed for six days due to the “PTI” sit-ins. Business in the area had come to a virtual standstill on Murree Road and other highways. Citizens including traders, students, doctors, paramedic staff, lawyers, government employees and patients had suffered a great deal from road blockades. Moreso, the life activity was practically paralyzed. The work of the courts within District Rawalpindi was affected practically due to the non-availability of the litigants and their counsel as they failed to attend their cases. Some of the participants of the sit-ins were armed with deadly weapons and they even were not shy to use the same to create deterrence for achieving their goals. This situation remained intact till 11.11.2022, until filing of these petitions, when by way

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of order dated 10th November 2022, in W.P.No.3253 of 2022 learned Law Officer representing the Province was directed to ensure the presence of the respondents i.e. Commissioner Rawalpindi, Deputy Commissioner, City Police Officer, Chief Traffic Officer and Senior Superintendent of Police (Operations), Rawalpindi as well as some responsible officer on behalf of Chief Secretary Punjab. On the next date, i.e. 11th November 2022, all the concerned officers were directed to submit their respective reports with regard to the matter in issue stating the facts as to at what points, the roads were blocked and what measures were taken till that time to ensure the free movement of the people in terms of Articles 9 & 15 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as “Constitution”). On the very same date, Senior Superintendent of Police (Operations), Rawalpindi and Deputy Commissioner, Rawalpindi undertook before the Court that they will ensure the free movement of the people, in the meanwhile.

3. This was surely the turning point and thereafter almost all places and points were got freed from the protestors. On 16th November 2022, reports in terms of order dated 11th November 2022, were filed by Chief Traffic Officer, City Police Officer and Commissioner Rawalpindi Division, however, reports on behalf of Chief Secretary, Punjab Lahore, Inspector General of Punjab Police, Lahore, Regional Police Officer, Rawalpindi and Deputy Commissioner, Rawalpindi were also requisitioned on the said date alongwith a comprehensive report from Intelligence Bureau on the subject.

4. The gist of the reports submitted by the respective departments is given below:-

Ministry of Interior, Islamabad (Respondent No.1)

It is mentioned that to review the overall law and order situation in the country in the backdrop of long march, a special meeting was held in which all the Chief Secretaries and Inspectors General of Police participated in which special instructions were parted to all the law enforcement agencies to tackle with the issue at hand through exclusive

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measures. Moreover, respective governments were asked to deploy requisite force to assist the NH&MP for keeping the national highways, motorways and link roads open. Moreover, a reference had been made to the Ministry of Law & Justice for furnishing constitutional/ legal opinion in the matter, however, the motorways and highways were cleared as a result of these efforts and the inconvenience of the public was averted.

Chief Secretary Punjab/Home Department (Respondent No.2)

It is reported that as per report of respondent No.3, after the Wazirabad incident, an abrupt emergence of protestors from almost all the suburbs of the city caused the blockade of roads at different points. This caused nuisance in the general public. Keeping in view of 2007 incident, the respondent No.3, alongwith District Administration, Rawalpindi took very cautious measures, it took immediate steps to handle the situation, coordinated with the Home Department, City Police Officer, Rawalpindi and the leadership of political parties. The police was ordered to re-open/unblock the roads. The leadership of political parties was engaged to calm down the protestors. All the blocked points were reopened. The mobs/protestors tried to affect the smooth flow of traffic for three days, but respondent No.3 alongwith District Administration, Rawalpindi dealt with the situation time and again. The general public was kept informed about the prevailing situation on daily basis. The traffic was diverted to the alternative routes and the general public was directed to follow the new administrative instructions. Furthermore, social and electronic media were used to ease and inform the general public. Apprehending the law and order situation, the District Administration, Rawalpindi announced three days local holiday in Educational institutions for the safety of children. All the untoward situation was handled leaving no leaf unturned. At present, all the roads are cleared and open and there remains no hurdle in the smooth running of traffic flow. Government of Punjab is committed to ensure the fair and peaceful running of traffic and others administrative affairs within its jurisdiction in future as well. Further, Government of Punjab has acted in accordance with true spirit of law and judgements passed by the superior courts to protect the life and property of citizens in the Province of Punjab.

Commissioner, Rawalpindi (Respondent No.3)

It is reported that amidst the outcome of Wazirabad incident and in order to avoid 2007 like incident, stern steps to maintain the law and order situation were taken including announcement of three days local holiday in Educational Institutions of the City.

Inspector General of Police (Respondent No.4)

It is reported that pursuant to order dated 16th November, 2022 passed by the Hon'ble Court, reports were sought from AIG/Operations, CPO Punjab and Regional Police Officer, Rawalpindi. According to the report of AIG/Operations, CPO Punjab, on receipt of letter dated 26th October, 2022 issued by Government of Punjab, Home Department regarding safety and security instructions Long March schedule to be started from 28.10.2022 by "PTI". Directions were then issued to the Addl: IGsP/Special Branch, CTD & PHP, Punjab, CCPO/Lahore, RPOs, Gujranwala, Gujrat, Sheikhupura and Rawalpindi, City Police Officers, Gujranwala and Rawalpindi and District Police Officers, Gujrat, Sheikhupura & Jhelum that a comprehensive strategy be adopted for the foolproof security of the participants during their movements/stay through Punjab to ensure the requisite precautionary and security measures as mentioned in the letter of Home Department.

Regional Police Officer (Respondent No.5)

It is reported that on receipt of order dated 16th November, 2022 passed by the Hon'ble Lahore High Court, report was sought from the City Police Officer, Rawalpindi. As per report of CPO, Rawalpindi, the members of the political party started protest against attack upon Chairman "PTI" and tried to block the roads in this district, due to which the traffic on the roads was badly affected. The blockade of roads by the protestors created law and order situation and it was apprehension that some untoward incident could be occurred due to which the protestors were handled carefully and urged to vacate the roads. Most of the protestors were camped near the roads which affected traffic flow and it gave semblance of the roads blockade. The district as well as Traffic Police managed the traffic

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blockade points by pushing the most protestors on one side of the road and the other side was cleared for the two-way traffic. However, once the roads got opened, different groups of protestors arrived and caused traffic conjunction. This continued for three days, however, traffic police gave alternate diversion routes to avoid inconvenience to general public. Moreover, criminal cases were registered at Police Station Taxila and Naseer Abad against the unknown protestors. It is further submitted that the general public was kept informed on daily basis about the prevailing situation and alternate routes of traffic through electronic as well as social media to provide maximum convenience. All the hurdles created by the protestors on the roads have been removed and now at the present all roads are cleared and there is no hurdle in smooth flow of traffic in the jurisdiction of district Rawalpindi.

City Police Officer, Rawalpindi (Respondent No.6)

It is submitted that due to Wazirabad incident, law and order situation of the country especially Punjab was disturbed. Heavy contingency of police was deployed to tackle the situation and with the collaboration of Traffic police, the protestors were pushed on one side of the road leaving the other side for free movement of the transport.

Deputy Commissioner, Rawalpindi (Respondent No.7).

Effective measures were taken including negotiation with the leadership of political parties to keep the smooth flow of traffic and general public was informed about the situation on daily basis through different modes.

National Highways and Motorway Police

It is mentioned that National Highways and Motorway Police has very limited mandate to administer and control the traffic related issues on Highways and Motorway, however, after the announcement of countrywide protest by a political party, detailed instructions were conveyed to the NH&MP field formations which includes, *inter alia* to maintain close liaison with the concerned SDPOs/NHA/FWO and also to remain in touch with the concerned SHOs of the District Police for

ensuring deployment of sufficient contingents of police at main toll plazas. Their main focus was to maintain free flow of traffic, ensure the safety of commuters. It is submitted that for the purpose, special police wings in the shape of anti-riot force and police reserves have been established by the local police, while the manpower sanctioned for the National Highways and Motorway Police does not include such anti-riot wings or reserves. Therefore, in such situations, NHMP becomes heavily dependent on local administration and provincial police.

5. In addition to the above, with consent of all in attendance, detailed report was requisitioned from Intelligence Bureau (I.B) vide order dated 16th November, 2022, which was submitted by the learned Law Officer in a sealed envelope on 23rd November, 2022. Though an immunity was solicited qua the said report but after opening of seal and examining the report and material placed in support thereof, I do not find any such material justifying extending of any privilege to the same, so the same may be made part of record. The report is not only comprehensive, supported by relevant material and nearer to the truth as well but contrary to the reports submitted by the Commissioner, Deputy Commissioner, Regional Police Officer, City Police Officer and National Highways and Motorway Police. As per said report, on 7th November, 2022, “PTI” activists blocked major roads leading towards ICT in the jurisdiction of Rawalpindi and Attock districts at different points. These blockades continued till 11th November, 2022 on the following places/points: -

- a. *Shamsabad, Murree Road, Rawalpindi in front of Allama Iqbal Park.*
- b. *Gulzar-e-Quaid, Old Airport Road, Rawalpindi.*
- c. *Pirwadhai Mor (Towards IJP Road), Rawalpindi.*
- d. *Motorway (M-2) Near Village Banjial, Rawalpindi.*
- e. *Motorway (M-1) Near Islamabad Toll Plaza.*
- f. *Chak Beli Mor, GT Road, Rawalpindi.*
- g. *Mian Misgari Chowk, Murree Expressway, Tehsil Murree.*
- h. *Ratta Shah Chowk, Margalla, GT Road, Tehsil Taxila.*
- i. *Bypass GT Road, Tehsil Taxila.*

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- j. *GT Road at Banth Adda, Tehsil Gujar Khan*
- k. *Rawalpindi-Kohat Road (N-80) at Dhok Maskeen, Fateh Jhang, District Attock.*

It is mentioned in the report that the protest was led by “PTI” MNAs/MPAs/ Provincial Ministers. The protestors managed to block all the major roads of Rawalpindi by taking advantage of their own government in the province (Punjab). No effective measures/actions were seen against them by the provincial government. It is also mentioned in the report that two FIRs were got registered at Police Station Taxila and Naseer Abad but against unknown protestors. It is also find mentioned in the report that on the intervening night of 9th/10th November, 2022, persons affiliated with Malik Taimoor Masood Akbar (MPA/“PTI”), Ammar Siddique Khan (MPA/“PTI”) and Mansoor Hayat (MNA/“PTI”) exchanged harsh words and later opened fire on each other. Resultantly, three persons of Ammar Siddique Khan Group got injured, which resulted into registration of FIR No.1464 dated 10th November, 2022 and a cross-version of the same date at Police Station Taxila.

- 6. Heard. Record perused.
- 7. The report and the material in the shape of snaps as well as CD alongwith report submitted by “IB” not only discloses the identity of the most of the protestors but the “PTI” MNAs, MPAs as well as Ministers of their ally government in the province. On the contrary, reports submitted by the Commissioner Rawalpindi, Deputy Commissioner, Rawalpindi, Regional Police Officer, Rawalpindi, City Police Officer, Rawalpindi and Home Department are too far from the truth.
- 8. Before further embarking upon the matter in issue, it would be advantageous to have a glance of the relevant laws conferring power to the Civil Administration and the Police for dealing with law and order situation including the issue at hand. In order to institute a comprehensive system of civil administration in the Punjab for efficient administration, improved service delivery, better coordination, supervision and regulatory enforcement and for ancillary matters, the Punjab Civil Administration Act, 2017 (Act III of 2017) (hereinafter referred to as “Act, 2017”) was

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promulgated. Section 3 of the “Act, 2017” encompasses the domain of Commissioners, Deputy Commissioners and Assistant Commissioners, which reads as under: -

3. Commissioners, Deputy Commissioners and Assistant Commissioners.—(1) The Government shall appoint a Commissioner for each Division, a Deputy Commissioner for each District and an Assistant Commissioner for each Tehsil in the Punjab from amongst the officers of the Service.

(2) A Commissioner shall be the officer-in-charge of general administration and principal representative of the Government in the Division.

(3) A Deputy Commissioner shall be the officer-in-charge of general administration and principal representative of the Government in the District.

(4) An officer appointed under subsection (1) shall perform the functions and exercise the powers under this Act or any other law or as the Government may, by order or notification, assign or delegate.

(5) The Commissioner and Deputy Commissioner shall be subject to general superintendence and control of the Government.

Functions of the Commissioner, Deputy Commissioner, Additional Commissioners and Additional Deputy Commissioners are laid down in sections 4, 5 and 6 of the “Act, 2017”, which are reproduced below: -

4. Functions of the Commissioner.—A Commissioner, in addition to any function under subsection (4) of section 3 and section 15, shall:

- (a) supervise and monitor the discharge of duties by the Deputy Commissioners in the Division;
- (b) coordinate the work of all the offices and public facilities in the Division;
- (c) facilitate and coordinate any work which concerns two or more Districts in the Division or two or more Divisions for purposes of integrated development, efficient use of public resources and effective service delivery; and
- (d) supervise and coordinate the implementation of the policies, instructions and guidelines of the Government.

5. Functions of the Deputy Commissioner.—A Deputy Commissioner, in addition to the functions mentioned in subsection (4) of section 3 and section 15, shall:

- (a) supervise and monitor the discharge of duties by the Assistant Commissioners in the District;

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- (b) coordinate the work of all the offices and public facilities in the district for purposes of integrated development, efficient use of public resources and effective service delivery;
- (c) support and facilitate the offices and public facilities in the District;
- (d) ensure that the standards set by the Government in respect of a public facility are fully observed; and
- (e) supervise and coordinate the implementation of the policies, instructions and guidelines of the Government.

6. Functions of the Additional Commissioners and Additional Deputy Commissioners.—(1) The Government may appoint one or more Additional Commissioner in each Division and one or more Additional Deputy Commissioner in each District from amongst the officers of the Service.

(2) An Additional Commissioner shall serve under the general administration and control of the Commissioner and shall perform the functions under this Act or any other law or as the Commissioner may, by order, assign.

(3) An Additional Deputy Commissioner or an Assistant Commissioner shall serve under the general supervision and control of the Deputy Commissioner and shall perform functions under the Act or any other law or as the Deputy Commissioner may, by order, assign.

(4) An Assistant Commissioner may distribute work among the officers subordinate to him in the manner and to the extent prescribed.

9. Section 15 of the “Act, 2017” bestows duty upon the Commissioner, Deputy Commissioner and the Assistant Commissioner, as the case may be, to ensure the maintenance of public order and public safety and safeguarding public or private properties in their respective jurisdictions. For ready reference and convenience, section 15 is reproduced below: -

15. Public order etc.—(1) The Deputy Commissioner on his own, or on the request of the head of a local government or head of the District Police, may convene a meeting for purposes of maintaining public order and public safety and safeguarding public or private properties in the District; and, the decisions taken in the meeting shall be executed by all concerned accordingly.

(2) Notwithstanding anything in subsection (1), in case of any unforeseen or sudden situation that threatens or is likely to threaten public order, public safety or public and private properties in the District, the Deputy Commissioner and the head of the District Police shall jointly take appropriate action to address the situation.

(3) The provisions of subsection (1) and subsection (2) shall apply mutatis mutandis to the Commissioner and Assistant Commissioner respectively in relation to the Division and the Tehsil.

(Underlining supplied for emphasis)

10. It appears from the report submitted by the Commissioner and the Deputy Commissioner that they were perhaps oblivious of their duties as ordained under the “Act, 2017”. It is though mentioned in the report of Commissioner, Rawalpindi that steps were taken to maintain the law and order situation but practically there was nothing except declaring three days public holiday in educational institutions of the city. It is quite strange that as per report of Deputy Commissioner, he took effective measures including negotiation with the leaders of the political parties to maintain law and order on daily basis through different modes. It is thus apparent from their own reports that the Commissioner and Deputy Commissioner have failed to discharge their duties, rather remained aloof from the critical situation and instead opted to assume the role of reconciliator or mediator, which is not the command of law.

11. It would not be out of place to mention here that on 11th November, 2022, Capt. (R) Shoaib Ali, Deputy Commissioner, Rawalpindi and Waseem, Senior Superintendent of Police (Operations), Rawalpindi, while being in attendance, undertook before the Court to ensure free movement of the people whereafter most of the blocked points were freed by the protestors, which were surely on account of filing of these petitions before the Court.

12. Adverting to the role of police, it is observed that as per command of the Police Order, 2002, the police has an obligation and duty to function according to the Constitution, Law and democratic aspirations of the people. The Police Order, 2002 was promulgated to reconstruct the police for efficient prevention and detection of crime and maintenance of public order. Chapter II of the Order lays down the responsibilities and duties of the police. Articles 3 and 4 are more relevant, which are reproduced below for the purposes of convenience: -

3. Attitude and responsibilities of police towards the public. It shall be the duty of every police officer to--

- (a) Behave with the members of the public with due decorum and courtesy;
- (b) Promote amity;

(c) Guide and assist members of the public particularly the poor, disabled or physically weak and children who are either lost or find themselves helpless on the streets or other public places; and

(d) Aid individuals who are in danger of physical harm particularly women and children.

4. Duties of police.—(1) Subject to law, it shall be the duty of every police officer to—

(a) Protect life, property and liberty of citizens;

(b) Preserve and promote public peace;

(c) Ensure that the rights and privileges, under the law, of a person taken in custody, are protected;

(d) Prevent the commission of offences and public nuisance;

(e) Collect and communicate intelligence affecting public peace and crime in general;

(f) Keep order and prevent obstruction on public roads and in the public streets and thoroughfares at fairs and all other places of public resort and in the neighbourhood of and at the places of public worship;

(g) Regulate and control traffic on public roads and streets;

(h) Take charge of all unclaimed property and to prepare its inventory;

(i) Detect and bring offenders to justice;

(j) Apprehend all persons whom he is legally authorized to apprehend and for whose apprehension, sufficient grounds exist;

(k) Ensure that the information about the arrest of a person is promptly communicated to a person of his choice;

(l) Enter and inspect without a warrant on reliable information any public place, shop or gaming-house where alcoholic drinks or narcotics are sold or weapons are illegally stored and other public places of resort of loose and disorderly characters;

(m) Obey and promptly execute all lawful orders;

(n) Perform other duties and exercise powers as are conferred by this Order, the Code or any other law for the time being in force;

(o) Aid and co-operate with other agencies for the prevention of destruction of public property by violence, fire, or natural calamities;

(p) Assist in preventing members of public from exploitation by any person or organized groups;

(q) Take charge of lunatics at large to prevent them from causing harm to themselves or other members of the public and their property; and

(r) Prevent harassment of women and children in public places.

(2) Police officer shall make every effort to—

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- (a) *Afford relief to people in distress situations, particularly in respect of women and children;*
 - (b) *Provide assistance to victims of road accidents;*
 - (c) *Assist accident victims or their heirs or their dependents, where applicable, with such information and documents as would facilitate their compensation claims; and*
 - (d) *Cause awareness among the victims of road accidents of their rights and privileges.*
- (3) *It shall be the duty of a police officer to lay information before a competent court and to apply for a summons, warrant, search warrant or such other legal process as may, by law, be issued against any person suspected of committing an offence.*

From the perusal of the above referred provisions of law, it is manifestly clear that it is primary duty of the police to protect life, property and liberty of citizens. The police has to ensure that the rights and privileges of the public shall be protected. As compared to the above, the police has played a role of silent spectator, rather remained as privy to the criminal acts of the protestors.

13. It was though expected from the City Police Officer that being head of the police of the city district, he not only commands the force in performance of its duties but to assist the Court in digging out the truth but surprisingly, role of City Police Officer is not appreciable at all. He not only failed to perform his duties but tried to cover the deeds of protestors and their masters. Despite availability of overwhelming material, only two FIRs were registered against unknown persons under minor offences. Registration of FIRs was only an eyewash and actual culprits were even not touched till today though their acts were clearly covered under section 6 of the Anti-terrorism Act, 1997. Role of Regional Police Officer was also not different from the City Police Officer. In whole episode, he also remained as dysfunctional organ.

14. Since there was a disruption not only at the Highways but at the Motorways, more particularly at the entry and exit points, so role of National Highways and Motorway police can also not be ignored. For the purpose of safe driving on the national highways and for matters connected therewith or incidental thereto, the National Highways Safety Ordinance,

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2000 (XL of 2000) (hereinafter referred to as “Ordinance, 2000”) was promulgated. Chapter VII of the Ordinance deals with establishment of a police for motorways and national highways. Sub-section (1) of section 90 empowers the Federal Government to establish a police force for performing police and traffic control functions on motorways and national highways and within such other territorial limits as it may, by notification in the official Gazette, specify. By virtue of sub-section (2) of section 90, the police force established under sub-section (1) is clothed with all powers of Station House Officer under the Code of Criminal Procedure, 1898 (Act V of 1898), Police Act, 1861 (V of 1861) and in additional thereto shall: --

- (a) regulate and control traffic on the national highways and prevent obstructions thereon;
- (b) keep order on the national highways and prevent the contravention of any rule, regulation or order made under this Ordinance or any other law in force;
- (c) maintain law and order on the national highways and take cognizance of offences committed thereon;
- (d) determine and regulate the category and type of traffic permissible at particular times keeping in view the road, weather and other conditions;
- (e) render all possible assistance to national highways users;
- (f) undertake initial investigation in respect of offences committed on national highways and then transfer the cases to the concerned police station for investigation. Restrict or stop local police from investigation and transfer of case back to National Highways and Pakistan Motorway Police.
- (g) plan, budget and manage publicity, information and education campaigns for the purposes of maintaining good order and safety on the national highways;
- (h) keep the highways clear from any encroachment and keep a look out for suspicious persons and criminals;
- (i) take into possession any abandoned property for its disposal under the law;
- (j) provide security to the travelers;
- (k) develop and maintain a transport research cell and laboratory for the purpose of carrying into effect the provisions of this Ordinance;
- (l) act as the advisory body to the National Highway Authority for proper planning building and development of national highways;

- (m) examine the feasibility, desirability and necessity of various facilities, hoarding, advertisements, etc. on or along the national highways from the security and traffic standpoint in order to achieve the objectives of this Ordinance, and take appropriate measures for its removal, closure or regulation;
- (n) enlist and maintain motor vehicle examiners for checking mechanical fitness of transport vehicles and issue no objection certificates for registration and route permits in respect of vehicles plying on national highways.
- (o) inspect and oversee installation of such other facilities on or along the national highways as are necessary for ensuring good order and safety of the public;
- (p) employ experts and enter into contracts including service contracts for the purposes of this Ordinance;
- (q) establish a competent licensing authority and driver testing facility;
- (r) promote the setting up of proper driver training schools in the private sector and co-ordinate their inspection and supervision through Provinces.
- (s) assist the Provinces in setting up such driving schools; and
- (t) perform such other functions as the Government may, from time to time, require;

Section 91 bounds down all the officers of the Police and Civil Armed Forces to assist the National Highways and Pakistan Motorway Police in discharge of its functions under the “Ordinance, 2000”. Section 94 empowers the Federal Government to appoint any person to be Magistrate of the first class within the meaning of the Code of Criminal Procedure, 1898 (Act V of 1898) for carrying into effect the provisions of the “Ordinance, 2000”.

15. Contrary to the mandate of law as mentioned hereinabove, the National Highways and Motorway Police came with the plea that their primary function is the traffic management and its regulation and control on the National Highways and Motorway. It is also apprised on behalf of National Highways and Motorway Police that they are neither equipped with the anti-riot equipment, bullet proof jackets etc. and lockups for the detention of persons arrested. It is pleaded that due to these reasons, National Highways and Motorway Police is heavily dependent on local administration, provincial police and other civil armed force. This was surely a reason that an important organ of the State, which is supposed to

protect the National Highways and Motorways from any kind of aggression, has become helpless and hostage in the hands of protestors. This is an eye opener for all of us. On the one hand motorways are sometimes though used for strategic purpose as well but no solid measures have been taken for ensuring the safety and protection either of Highways or Motorways. It is observed that from its inception, the role of Motorways police was exemplary but with the passage of time, their efficiency like other departments has started deteriorating though still better from many of the Departments but it needs serious consideration of the concerned authorities, especially Inspector General of Motorway Police. The role of National Highway Police is, however, only illusory, which is not appreciable at all and needs drastic measures for improvement.

16. It would not be out of place to mention here that in order to evolve the traffic management system in the cities, Punjab Police Traffic Wardens were appointed and a special traffic cadre of the Punjab Police was created under Article 8 of the Police Order, 2002. In exercise of powers conferred under article 112 of the Police Order, 2002, the Punjab Police Traffic Wardens Service Rules, 2017 were framed. Rule 12 of the Rules ibid provides function and duties of the Chief Traffic Officer and Traffic Officer in the following manner: -

- (a) *shall assist the Head of District Police in traffic management functions;*
- (b) *act as per guidelines, instructions and standard operating procedures for traffic management system issued by the Head of Traffic Police;*
- (c) *enforce the provisions of the Provincial Motor Vehicles Ordinance, 1965 and Motor Vehicle Rules 1969 or any other law;*
- (d) *monitor the performance of the members;*
- (e) *assist the members in regulating traffic on roads or choke points;*
- (f) *ensure proper deployment of traffic duties in the district;*
- (g) *conduct driving tests and issue driving licenses of all categories as per rules;*
- (h) *initiate traffic education and awareness programmes;*

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- (i) shall be responsible for working, discipline and conduct of the members;
- (j) coordinate with other departments and allied agencies for efficient working of traffic management system;
- (k) initiate Performance Evaluation Reports as determined; and
- (l) any other duties assigned by the Head of District Police regarding traffic management.

Though a specific and exclusive function has been assigned to the traffic officers in the cities but with few exceptions they have failed to discharge their functions and duties as per mandate of law. It is generally observed that traffic wardens only play a role of silent spectator or guide instead of realizing their actual functions and duties. Their performance needs to be addressed by the Chief Traffic Officer at the priority and they should be reformed into the officers of a Law Enforcement Agency.

17. Coming to the role of respondents No.8 and 9 being the General Secretary and Chairman of “PTI”, it is observed that though it is claim of the petitioners that they were in fact basic source of all this situation but no concrete or cogent material has been brought before the Court to demonstrate that said respondents have actively played any role for the commission of offences by the protestors. The allegations against them are generalized in nature. At the same time, it was expected from both the respondents that they being the leaders of one of the largest parties of the country should have condemned the acts of their followers. Instead, respondent No.8, in a public gathering held during the pendency of this petition, tried to defend the illegal and unlawful acts of the protestors and in doing so, he had uttered certain remarks against the superior judiciary on account of which he was issued a show cause notice by way of order dated 5th December, 2022. Respondent No.8 in pursuant to the order of the court entered his appearance on 7th December, 2022 and tendered unconditional apology, which was accepted and show cause notice was recalled.

18. Right to assemble peacefully is a fundamental right of every citizen guaranteed under Article 16 of the “Constitution” but such right is neither unbridled nor unlimited. Article 16 though guarantees such right but it is always subject to reasonable restrictions imposed by law in respect

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of public order. A citizen who claims right of freedom of assembly for himself/herself has to keep in mind the fundamental rights of the other citizens, guaranteed under the “Constitution” e.g. security of person, freedom of movement, trade business and profession. Guidance in this respect can be sought from *Watan Party and another v. Federation of Pakistan and others (2011 KLR Supreme Court 298)*. The relevant extract from the same is reproduced below: -

“4. Article 14 of the Constitution of Pakistan ensures dignity of every individual. In the case of ‘Commissioner of Income Tax v. Eli Lilly Pakistan’ reported as 2009 SCMR 1279, this Court observed that:

“It is the duty and obligation of the State on account of the various provisions of the Constitution to provide the atmosphere based on honesty by providing equal protection of law. Every citizen must be treated equally, dignity of human being life should be maintained, and liberty of life and honour must be guaranteed as envisaged in the Articles 9, 14 and 25 of the Constitution.”

5. Articles 15 and 18 of the Constitution, respectively relate to freedom of movement etc. and freedom of trade, business or profession and have been interpreted by this Court in the case titled “Government of Pakistan v. Zamir Ahmad” reported as PLD 1975 SC 667, in the following words: –

“Article 18 of the Constitution of Pakistan, which relates to the freedom of trade, business or profession, which corresponds to Article 15 of the interim Constitution, and which incidentally held the field at the relevant time, assures the citizens the right to enter upon any “lawful profession of occupation” and “to conduct any lawful trade or business”. It is important to point out that the word “lawful” qualifies the right of the citizen in the relevant field. This clearly envisages that the State can by law ban a profession, occupation, trade or business by declaring it to be unlawful which in common parlance means anything forbidden by law. Prostitution, trafficking in women, gambling, trade in narcotics or dangerous drugs are common place instances of unlawful profession or trade. These are inherently dangerous to public health or welfare. Therefore, on the wording of Article 18 of the Constitution, the right to enter upon a profession or occupation or to conduct trade or business can hardly be described to be a Constitutional or Fundamental Right when such right may be denied by law. In this respect our Constitution stands in sharp contrast with the corresponding provision of the Indian Constitution which omits the use of word “lawful” in the relevant Provision.”

The same principle was enunciated by this Court in the case of Arshad Mehmood (supra). This Court observed that the Government has the authority to regulate a lawful business or trade. Reasonable restriction, however, does not mean prohibition or prevention completely.

Article 24(1) of the Constitution envisages that no person shall be deprived of his property save in accordance with law.

6. Any democratic set up consisting of citizens and functionaries in the country under the Constitution is bound to show its loyalty to the State, for to be loyal and faithful to the State is the basic duty of every citizen under Article 5 of the Constitution. This Court in the case of *Shahid Orakzai v. Pakistan through Secretary Law (PLD 2011 SC 365)* held that Article 5(2) of the Constitution has mandated that obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be and for every other person for the time being within Pakistan. The chosen representatives, who have acquired authority on behalf of their electors as members of the National Assembly, Senate or Provincial Assemblies as per mandate of their oath, which they take before entering upon office, are bound to bear true faith and allegiance to Pakistan. The oath of the office of members of the National Assembly and Senate as set out in the Third Schedule provides that the members will perform their functions honestly, to the best of their ability, faithfully and in accordance with the Constitution and law; that they will act in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan and they will preserve, protect and defend the Constitution. Therefore, while holding a constitutional office, the chosen representatives of the people have to remain true to their oath and to observe constitutional limits in all circumstances.”

19. Sit-in (جگہ) has become a common phenomenon and fusty trend in Pakistan. It has now become a source/weapon not only with the political parties but every segment of society having followers/ members/ companions to stage a sit-in for their demands so as to exert pressure upon the executive/state to fulfill their demands, leaving aside all the legal course provided under the law. This trend has led the country to destabilization. In civilized countries, nobody can be allowed to take the law in his/her own hands irrespective of the fact how much the worst condition is. Pakistan is perhaps the only country in which the law enforcement agencies/executive, instead of defending the cause of the State and maintaining its writ, join hands with the persons/groups, who intend to erode the sovereignty of the State or to create lawlessness on extraneous reasons. It is not the first time in the history of country that such incident had taken place. In recent past, when the members of Tehrik-e-Labbaik Pakistan (TLP) and its supporters occupied a road junction (interchange) known as the ‘Faizabad Interchange’, the Hon’ble Supreme Court of Pakistan took suo motu notice as Suo Motu Case No.7 of 2017 reported as SUO MOTU CASE NO.7 OF 2017 (PLD 2019 Supreme Court 318). In

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the said judgment, the Hon'ble Apex Court after taking into consideration all the material facts passed the following declarations and directions: -

"53....

(1) ...

(2) *Every citizen and political party has the right to assemble and protest provided such assembly and protest is peaceful and complies with the law imposing reasonable restrictions in the interest of public order. The right to assemble and protest is circumscribed only to the extent that it infringes on the fundamental rights of others, including their right to free movement and to hold and enjoy property.*

(3) *Protestors who obstruct people's right to use roads and damage or destroy property must be proceeded against in accordance with the law and held accountable.*

(4)

(5)

(6) *The State must always act impartially and fairly. The law is applicable to all, including those who are in government and institutions must act independently of those in government.*

(7) ...

(8)

(9)

(10)

(11)

(12)

(13) *Intelligence agencies should monitor activities of all those who threaten the territorial integrity of the country and all those who undermine the security of the people and the State by resorting to or inciting violence.*

(14)

(15)

(16) *The police and other law enforcement agencies are directed to develop standard plans and procedure with regard to how best to handle rallies, protests and dharnas, and ensure that such plans/ procedures are flexible enough to attend to different situations. It is clarified that though the making of such plans/ procedures is not within the jurisdiction of this Court however we expect that in the maintenance of law and order every effort will be taken to avoid causing injury and loss of life.*

Had the above directions been complied with by the relevant authorities, the present incident would have not happened.

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20. In the wake of above discussion, it is observed that though all the entry and exit points which were blocked by the protestors have been opened by their own or with the intervention of the administration during the pendency of these petitions but this would neither absolve the protestors and their allies from criminal liability nor the executive authorities/officers from their failure to discharge their duties. All these petitions are, thus, disposed of with the direction to the officers of Civil Administration, Police, National Highways and Motorway Police, City Traffic Police, Secretaries concerned of the Federal and Provincial Governments to evolve a mechanism for ensuring that no such incident shall take place in future. They shall also adhere the relevant laws in true spirit. All the relevant offices/authorities/officers shall also ensure the compliance of directions of the Hon'ble Supreme Court of Pakistan in the case referred hereinabove.

21. Before parting, it is observed that since the Commissioner, Deputy Commissioner, Regional Police Officer, City Police Officer and Chief Traffic Officer have miserably failed to discharge their official duties in terms of relevant laws and instead acted as privy to the illegal acts, so their matter is referred to the Secretary Establishment, Government of Pakistan and Chief Secretary, Punjab, who shall probe into their conduct and proceed against them strictly in accordance with law. They are directed to hold an inquiry in order to examine the conduct and evaluate the efficiency and discipline of all these officers. The proceedings to this effect shall be initiated and materialized within three months from the date of receipt of instant order under intimation to the Additional Registrar (Judl.) of this Court, who shall on receipt of the report place it before the Court for perusal.

22. Office is directed to circulate this judgment amongst: -

- i.* Secretary Establishment, Government of Pakistan.
- ii.* Chief Secretary, Punjab.
- iii.* Secretary Law & Parliamentary Affairs, Punjab.
- iv.* Inspector General of Police, Punjab.

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- v. Additional Inspector General of Police, Punjab.
- vi. Inspector General of Police, Highways and Motorway Department.
- vii. Regional Police Officers in Punjab.
- viii. City Police Officers in Punjab.
- ix. Chief Traffic Officers in Punjab.
- x. Commissioners in Punjab.
- xi. Deputy Commissioners in Punjab.

**(MIRZA VIQAS RAUF)
JUDGE**

Dictated:

27.02.2023

Signed
08.03.2023

Approved for reporting

JUDGE

Announced in open Court on 08.03.2023.

JUDGE