

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 3383 of 2020

Islamabad Marquees, Catering and Banquet Hall Association

Vs

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
02)	<u>18-11-2020.</u>	SardarTaimoorAslam Khan Advocate, for the petitioner. Mr Khalid Javed Khan, Attorney General for Pakistan. Mr Tariq MehmoodKhokhar, Additional Attorney General. Syed Muhammad Tayyab, Deputy Attorney General. MrSaqlainHaiderAwan, Assistant Attorney General. MrAtifKhokhar, State Counsel.

ATHAR MINALLAH, C.J.-The Islamabad Marquees, Catering and Banquet Halls Association [hereinafter referred to as the "**Association**"] has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, [hereinafter referred to as the "**Constitution**"], seeking the following prayer:

*"In view of the averments made above, it is most respectfully prayed that this Honourable Court may graciously be pleased to allow the instant Petition and may kindly declare the Impugned Notification dated 06-11-2020, issued by the NCOC, to the extent of the first part, namely "**Ban on Indoor Marriages**", of Clause 1, Sub-Clause*

(b), 'to take effect from 20-11-2020 and remain in force till further notice', as being without any legal and rational basis arbitrary and discriminatory and violative of Articles 4, 18 and 25 of the Constitution, and may please set the same at naught, in the interests of justice.

Any other relief that this Honourable Court deems just, fit and proper in the circumstances may graciously be awarded to the Petitioner Association."

2. In response to notices issued for the attendance of an authorized representative of the National Command and Operation Centre [hereinafter referred to as the "**NCOC**"], the learned Attorney General for Pakistan has appeared, who is also one of its members. He has submitted a written report and has attached therewith a copy of the minutes of the 19th meeting of the National Coordination Committee on Covid-19 [hereinafter referred to as the "**Committee**"] held on 16.11.2020. The decisions taken in the said meeting are reproduced as follows:

#	Decisions/directions by NCC	Responsibility	Timeline
1	Large gatherings: All Outdoor gathering of more than 300 persons to be banned. SOP implementation shall be the responsibility of the organizers and they would be liable for any death or spread of Covid-19 due to these gatherings as per law.	All Chief Secretaries/Chief Commissioner ICT	Immediate
2	Weddings: No Indoor event to be allowed;	All Chief Secretaries/Chief	November 20, 2020

	only Outdoor events with maximum of 300 guests will be allowed.	Commissioner ICT	
3	Restaurants: Indoor dinning allowed for present. To be reviewed in a week's time. The public is strongly encouraged to use either outdoor or takeaway options. This is in view of high risk of transmission of virus in close indoor settings especially when masks are taken off during eating.	All Chief Secretaries/Chief Commissioner ICT	Immediate
4	Educational Institutions: The option of early/extended winter vacations will be reviewed after consultation by Federal Education & Professional Training Division with all Provinces/Federating Units, in a week's time.	Minister, Federal Education & Professional Training Division Provincial Education Ministers	November 23, 2020
5	Reiteration of enforcement of masks in all closed and crowded spaces by local authorities as previously decided.	All Chief Secretaries/Chief Commissioner ICT	Immediate

3. In response to a query, the learned Attorney General has informed that the Committee is headed by the Prime Minister of Pakistan and, inter-alia, includes the Chief Ministers of the respective provinces, Gilgit and Baltistan Region and the Prime Minister of the Government of Azad Jammu and Kashmir. The Committee has been constituted to take decisions regarding the challenges that stem in the context of the Covid-19 pandemic. The Committee is assisted by experts from across the country and the decisions are based on their expert advice. The NCOC has been established to implement the decisions of the Committee.

4. It is noted that the existence of the human species has been threatened by the unknown and mysterious deadly virus

which causes Covid-19. It has spread across the globe and has profoundly affected millions of humans in almost every country. The most powerful and scientifically advanced states have also been unable to protect their citizens from the harm of this deadly pandemic. Like the influenza outbreak in 1918 and 1919, the human race, despite its phenomenal achievements in the fields of science and technology, seems to be helpless in the face of the catastrophic impact of Covid-19, so much so that medical practitioners in some of the most advanced countries were forced to exercise their discretion in order to decide who to save. These are indeed difficult, uncertain and extra ordinary times. The public functionaries and the entire national leadership are expected to demonstrate extra ordinary qualities. The responsibility of the latter category is more onerous because they lead and influence the people. The deadly pandemic has become a reality and no one is immune from its devastating harm. Every citizen ought to realize that he or she, as the case may be, could be the next victim if its spread is not contained. The human and economic cost of this deadly pandemic are unimaginable. Though it does not show mercy to any particular class but the worst affected are the weaker and marginalized segments of the society i.e. the daily wagers and others who are employed in the informal sectors of the economy.

5. The ethical tragedy of having to choose who to save has been a reality and not a mere fiction in those societies which have developed the most advanced health care facilities. In Pakistan a second wave is spreading rapidly, which is reported to be more severe and deadlier than the previous. The Chief Justice of the Peshawar High Court, *Justice Waqar Ahmed Seth* was amongst many who have fallen victim to the deadly virus. The nation has already suffered irreparably and the life of every unaffected individual matters. The measures and decisions taken by the Committee and its implementation are related to the right to life of every citizen and guaranteed under Article 9 of the Constitution.

6. It is a challenge, not only for the government but every citizen, to contain the spread of the second wave of the pandemic. It is not a choice but a duty of the citizens to contribute towards this national goal. The freedom of an individual and rights are subservient to the interests and rights of the public at large. The Constitution guarantees fundamental rights but simultaneously contemplates corresponding duties. It is the duty of every citizen not to infringe the constitutionally guaranteed rights of others. When a citizen acts in disregard to the interests of the general public, the constitutionally guaranteed rights are breached. Article 5 of the Constitution declares obedience of the Constitution and the law as an inviolable obligation of every citizen. In the present crisis, it is the duty of every citizen to

demonstrably show his or her commitment to the national effort in containing the menace of the spread of the second deadly wave of the pandemic. It is important for every individual to realize that he or she, as the case may be, could be the next victim. The acts or omissions of those who do not display responsible conduct as citizens inevitably expose others to harm and expose them to the life threatening risks relatable to Covid-19. Such conduct indeed borders on criminality. In many countries such conduct is likely to expose a violator to the imposition of heavy fines, besides being sent to prison upon conviction. It is, therefore, the duty of every citizen to prevent the propagation of the Covid-19 pandemic.

7. The decisions of the Committee are based on expert advice, which must be respected and followed in order to avert a catastrophic social, economic and life threatening crisis. The invisible enemy threatening humanity can only be defeated through a unified committed effort. The nation has no other choice but to unite and protect humanity from the harm of the pandemic. The constitution of the Committee has a national character and thus its decisions are not only to be trusted and respected but treated as binding. It is the duty of the NCOC to ensure implementation of the decisions of the Committee. The decisions taken in the 19th meeting held on 16.11.2020, appear to be reasonable and thus binding.

8. Even otherwise, it is settled law that courts exercise restraint in matters of Government Policies except when it can

be shown that fundament rights have been violated. Policy making is within the exclusive domain of the executive and interference in such domain is not the function of this Court. Reliance is placed on the cases of *Engineer Iqbal Zafar Jhagra and Senator Rukhsana Zubairi...Vs...FOP and others* (2014 SCMR 220), *OGRA through Secretary...Vs...Messrs Midway II, CNG Station and others* (2014 PTD 243), *Secretary Economic Affairs Division, Islamabad and others...Vs...Anwar ul Haq Ahmad and other* (2013 SCMR 1687), *Dossani Travels Pvt. Ltd. and four others...Vs...Messrs Travels Shop Pvt. Ltd. and others* (2013 SCMR 1749), *Punjab Public Service Commission and another...Vs...Mst. Ayesha Nawaz and others* (2011 SCMR 1602) and *Wattan Party through President...Vs...FOP through Cabinet Committee of Privatization, Islamabad and others* (PLD 2006 S.C. 697).

9. The inmates of the overcrowded prisons across the country are most vulnerable to the risks involved in the spread of the virus. Most of them are under trial prisoners and thus presumed to be innocent. This Court expects that the Committee, a national level forum established to protect citizens from the harm of the pandemic, will take immediate policy decisions so that the right to life of the inmates of prisons is not breached.

10. In the light of the above discussion it is declared that the decisions of the Committee are binding and not justiciable by a judicial forum. It is the duty of every citizen and public

functionary throughout Pakistan, Azad Jammu and Kashmir Territory and Gilgit/Baltistan Region to implement and facilitate the implementation of the decisions taken by the Committee in letter and spirit. Any breach is likely to expose a citizen or a public functionary to legal consequences, civil as well as criminal.

11. This Court is not inclined to interfere with the decisions of the Committee because it could expose the public at large to irreparable harm and, therefore, the petition is **disposed of** in the above terms.

(CHIEF JUSTICE)

Tanveer Ahmed/*
18-11-2020.

Approved for reporting.