

## JUDGMENT SHEET

### ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

Writ Petition No. 908/2017

Shuja Sharif & 7 others.

Versus

FOP & 3 others.

Petitioners by: Mr. Babar Sattar, Advocate.

Respondents by: Ch. Hasan Murtaza Mann, Advocate for  
respondent No.4.

Mr. Muhammad Haseeb Ch., D.A.G.

Iqbal Ahmed Khan, DSP (Legal), NH&MP.

Muhammad Asad, Inspector (Legal),  
NH&MP.

Date of Hearing: 09.03.2018.

### JUDGMENT

Through this writ petition the petitioners seek direction to declare illegal and *void ab initio* the ban of motorcycle access to motorways imposed by the National Highways and Motorway Police through certain amendments in the National Highways and Motorway Police Drivers Licensing Authority Rules, 2014.

2. Brief facts referred in the instant writ petition are that on 06.02.2010 Lahore Bikers Club made an application to respondent No.3/National Highways and Motorway Police (hereinafter "*NH&MP*") seeking unhindered access and permission to drive heavy bikes i.e. over 600cc on motorways whereby NH&MP by ignoring provisions of National Highways Safety Ordinance, 2000 (hereinafter "*NHSO*") sought proposals from Lahore Bikers Club to establish Standard Operating Procedures ("*SOPs*"), which was submitted by the said club keeping in line the international safety standards. The NH&MP after conducting training session in March, 2010, issued biker's cards to all petitioners on 10.04.2010, however in May, 2013 NH&MP acting arbitrarily and without any notice banned petitioners to access and use the motorways despite the fact that they hold valid

permits and meet the SOPs. Resultantly, the Lahore Bikers Club filed writ petition No.32108/2014 in the Lahore High Court, Lahore against revocation of biker cards and prohibition of motorcycle access to the motorways, however during the pendency of said writ petition various meetings were reportedly held between the Lahore Bikers Club and NH&MP and for the reason that the said writ petition was withdrawn with the confidence that some mechanism regarding reopening motorways for heavy bikes would be devised. Whereas, the Ministry of Communications/respondent No.2 framed the National Highways and Motorway Police Drivers Licensing Authority Rules, 2014 (hereinafter “*DLA Rules, 2014*”) wherein no prohibitions or conditions for motorcycles to access motorways are devised, however respondent No.3, with respect to motorcycle access to motorways, prepared amendments to certain sections of the DLA Rules, 2014 though no action has been taken by the Ministry of Communications and the DLA Rules, 2014 have not yet been amended and as per the DLA Rules, 2014 and provisions of NH&SO, there is no ban on motorcycle access to motorways. Hence, the instant writ petition.

3. Learned counsel for petitioners contended that Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 provides that no person shall be prevented from doing that is not prohibited by law whereas under the NH&SO, there is no prohibition on the access of motorcycles to motorways; that the NH&SO under section 45 grants the Federal Government or any agency authorized by the Government the power to prohibit any specified class of motor vehicles on a specified road in the interest of public safety or convenience whereas no authorization to prohibit motorcycles on motorways has been granted by the Government to NH&MP/respondent No.3; that Section 90 of the NH&SO is regulatory and not prohibitory whereby it empowers NH&MP/respondent No.3 only to regulate and control the traffic on highways; that the DLA Rules, 2014 have not been promulgated in accordance with law, therefore, liable to be declared *ultra vires* of law; that the Ministry of

Communications/respondent No.2 is vested with no authority to promulgate the DLA Rules, 2014 whereas Section 17 of the NH&MP provides the Government the power to make rules in relation to licensing, therefore, the DLA Rules, 2014 are *ultra vires* and liable to be struck down; that petitioners relied upon representations of NH&MP/respondent No.3 by encouraging the use of motorcycles on motorways and issuing the biker cards with validity of 3 or 5 year and imported heavy bikes along with payment of huge duties to the Government of Pakistan, therefore, the impugned ban is illegal in view of principle of promissory estoppel; that the impugned ban has been imposed without any legitimate public interest; that when rights, entitlements and duly granted permissions are arbitrarily revoked, the same are subject to judicial review and appropriate orders can be passed under Article 199 of the Constitution; that the impugned ban contravenes the substantive rights of the petitioners guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973 including the right to life and its enjoyment (Article 9), the right to freedom of movement (Article 15), the right to enjoyment of property (Article 23), and the right to equality and freedom of discrimination, therefore, impugned ban is in violation of fundamental rights of the petitioners and is *ultra vires* of the NH&MP, illegal and *void ab initio* and that respondent No.3 is not authorized to exercise its authority in arbitrary and whimsical manner.

4. Conversely, learned DAG on behalf of Secretary Cabinet Division as well as Ministry of Communication and the Inspector General, NH&MP through parawise comments contended that at the time of inception of motorways all types of bikes were banned to ply on motorway except that of NH&MP patrolling motorcycles (Shaheen) but later on these NH&MP patrolling motorcycles were replaced with patrolling cars to safeguards the lives of patrolling officers on motorways. Initially, permission was granted to bikers on trial basis with the sole object to reach a judicious, fair, just, and reasonable conclusion subject to adhering to devised SOP by NH&MP but it was observed

that motorcyclists often did not follow the relevant SOP which hindered the smooth flow of traffic, therefore, the permission was withdrawn; that there are only three lanes on each carriage way on motorways and no track for motorcycles is available, whereas Lane-I is reserved for HTVs/PSCs, Lane-II is for normal overtaking while Lane-III is for overtaking of vehicles in the Lane-II by motorcars only, hence in absence of dedicated lane for motorcycles it is neither safe nor feasible to mix motorcycles with other traffic; that motorways are high speed roads which increases the risk of fatality for motorcyclists, especially due to creation of air pockets by heavy transport vehicles which may drag motorcyclists and can cause mishap; that the high speed vehicular traffic requires more visibility due to availability of lesser time of response for a driver whereas motorcycles are not noticeable during the night as well as at the time of poor visibility due to rain, fog, smog, wind, etc.; that every country has its own law, rules, environment, road conditions, drivers' behavior, driver training facilities, driving licensing procedure, road sense, etc. and on the basis of these facts allowing motorcycles on motorways in Pakistan is unfeasible, unsafe and danger in the prevailing conditions even the motorcyclists have more tendency towards violation of laws and rules, racing, over-speeding, sharp cutting and straddling, land straddling, going zigzag between the cards, paring up, group riding, and forcing their way in between parallel moving cars; that allowing only heavy bikes on motorways and prohibiting lighter motorcycles i.e. 125CC, 100CC, and 70CC, it will cause discrimination and if all types of motorcycles are allowed to use motorways then the very object of motorways will vanish in terms of speed, safety, and convenience of commuters; that the NH&SO, 2000 entrusted responsibility to NH&MP to regulate traffic and to ensure safety of road users; that Section-45 of the NH&SO, 2000 empowers the Government or any agency authorized by it in this behalf, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may prohibit or restrict, subject to such exceptions and conditions as may be specified,

the driving of motor vehicles or of any specified class of motor vehicle or the use of trailers either generally in a specified area or on a specified road or bridge and when any such prohibition or restriction is imposed, shall cause appropriate traffic sign to be placed under Section-46 at suitable places in such area or on or near such road or bridge; that similarly Section-46 also extends powers to the Government or any agency authorized to permit traffic signs in this behalf with specific size, color, and type as referred in the 7<sup>th</sup> Schedule of the Ordinance; that Section-90 of the said Ordinance provides the establishment of police for national highways to control traffic on national highways whereas Section-90(1) provides establishment of the police force with powers of an SHO provided under Section-90(2) to (a) regulate and control traffic on the national highways and prevent obstructions thereon, (b) keep order on the national highways, (c) maintain law and order, and (d) determine and regulate the category and type of traffic permissible at the particular time keeping in view the road, weather and other conditions. On the other hand, learned counsel for respondent No.4 contended that All Pakistan Goods Transport Truck Owner Association is also aggrieved if permission is granted to heavy bikes for use of motorways as they are beneficiary of the Lane-III and they are not allowed to use the Lane-I, therefore, the bikers, if permitted to use Lane-III only, it will affect the smooth use of Lane-III.

5. Arguments heard, record perused.

6. From the perusal of record it has been observed that on 06.02.2010 Lahore Bikers Club made an application to the NH&MP seeking unhindered access and permission to drive heavy bikes i.e. over 600cc on motorways whereby the NH&MP/respondent No.3 without any authorization by the Federal government or backing by provisions of the NH&SO, acted as parallel regime to declare whether to allow or prohibit heavy bikes to access and use the motorways. In this regard, the NH&MP/respondent No.3 sought proposals from the Lahore Bikers Club to establish SOPs to allow the access they prayed for, whereupon the said

club submitted certain SOPs keeping in view the international safety standards such as minimum age, valid license, safety headgear, protective clothing, shoes, hand gloves, etc. As a result whereof, in March, 2010, the NH&MP/respondent No.3 conducted first training session at their training institute at Shiekhupura and thereafter the NH&MP/respondent No.3 issued biker's cards to all petitioners permitting them to use the motorways. Accordingly, petitioners while relying upon the provisions of NHSO and biker cards issued by NH&MP/respondent No.3, spent millions of rupees along with custom duty to the Government of Pakistan and imported expensive heavy bikes to be driven on motorways. However, after three years of successful use of motorways, the NH&MP/respondent No.3 in May, 2013, acting arbitrarily and without any notice banned Lahore Biker Clubs as well as petitioners to access and use the motorways despite the fact that they hold valid permits and meet the SOPs. Resultantly, the Lahore Bikers Club filed writ petition No.32108/2014 in the Lahore High Court, Lahore against revocation of biker cards and prohibition of motorcycle access to the motorways, however several meetings were reportedly held between the Lahore Bikers Club and NH&MP during the subsistence of said writ petition whereupon the Lahore Bikers Club withdrew the said writ petition with the hope that some mechanism regarding motorcycles access to motorways would be devised. On the other hand, the Ministry of Communications/respondent No.2 framed the DLA Rules, 2014 with no prohibitions or conditions for motorcycles to access motorways. However, respondent No.3, with respect to motorcycle access to motorways, prepared amendments to certain sections of the DLA Rules, 2014 though Ministry of Communications/respondent No.2 took no action on the amendment and the DLA Rules, 2014 is in original form till date but NH&MP/respondent No.3 in violation of the DLA Rules, 2014 and provisions of the NHSO, imposed ban on motorcycles to use motorways.

7. The precise question placed before this Court is to whether any motorcyclist is permitted to use motorways under the NHSO, 2000 or there is any restriction imposed by law, therefore, in order to understand the basic question we have to consider the legal aspect under the NHSO, 2000, especially when the *vires* of the law has already been challenged in the instant writ petition and notice under Order XXVII-A CPC has already been issued to the Attorney General of Pakistan. Essentially, the NHSO, 2000 provides the following definitions of the main keywords used in this case.

***Section 2(1)(xxiv) "License"** means the document issued by a competent authority authorizing person specified therein to drive a motor vehicle of any specified class or description or any animal drawn vehicle.*

***Section 2(1)(xxv) "Licensing Authority"** means an authority empowered to grant licenses under this Ordinance.*

***"Section 2(1)(xxxi) "Motor cycle"** means any two wheeled vehicle, with or without a side car, which is equipped with a propelling engine but does not include a moped.*

***"Section 2(1)(xxxiv) "Motorway"** means a road especially designed and built for motor vehicles which does not serve the properties bordering on its except at special points and has separate carriage ways for the two directions of the traffic and does not cross at level with any road, railway, tramway, cycle tract or footpath.*

8. Besides the above referred definitions, Chapter-II (Licensing) imposes the following restrictions.

*3. Prohibition on driving without license: No person shall drive a road vehicle or animal drawn vehicle on a national highway unless he holds and carries on this person a valid driving license issued to drive the particular class and type of vehicle.*

*4. Age limit in connection with driving of road vehicle: (1) No person shall drive on a national highway:*

*(a) a motor cycle or a motor car, otherwise than as a paid employee unless he has attained the age of eighteen years;*

*(b) a transport vehicle, a public service vehicle, a motor car or an animal drawn vehicle as a paid employee unless he has attained the age of twenty-one years, and*

*(c) a transport vehicle above the age of sixty years.*

*(2) No fresh license for a transport vehicle shall be issued unless the license bears an effective endorsement by the licensing authority that the*

*person holding such a license has furnished a certificate in form "B" signed by the Chairman of the Medical Board as specified in the First Schedule.*

*(3) That Government may constitute medical Boards as specified in the Second Schedule which shall meet periodically on a pre-designated time, day and place to test and certify persons required under this Ordinance."*

9. Whereas, Section-9 of the Ordinance extends validity of the license throughout the Pakistan which should be renewed in terms of Section-11 and the only mechanism to cancel the license has been provided in Section-12 which is on the basis of medical unfitness, decease or disability whereas the disqualification factors for holding a valid license have been described in Section-14 whereupon person may be disqualified to hold a valid license if (a) he is a habitual drug addict, (b) a habitual criminal, (c) using or has used a motor vehicle in the commission of a cognizable offence, (d) has by his previous conduct as driver of a road vehicle shown that his driving is likely to be attended with danger to the public or, (e) a habitual drunkard. Similarly, Section-15 extends powers to the Court to disqualify license whereas Section-16 gives effect of disqualification order whereby a person is not allowed to drive any vehicle on any road. The Ordinance also provides concept of registration of vehicle in details as well as concept of appeal and special requirement for registration. In terms of Section-17 and Section-38, the Government in consultation with NH&MP may make rules for the purpose of carrying into effect by notification in the official gazette, however the provisions which are under discussion in this case and mainly relied upon by the parties is Section-45. For ready reference the same has been reproduced as under.

**"45. Power to restrict the use of vehicle:-** *The Government, or any agency authorized by it in this behalf, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may prohibit or restrict, subject to such exceptions and conditions as may be specified, the driving of motor vehicles or of any specified road or bridge and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 46 at suitable places in such places in such area or on or near such road or bridge as the case may be."*



The above referred provision extends powers to the Government or any agency authorized by the Government is allowed to “prohibit or restrict” the driving of motor vehicles on any specified road or bridge but the application of this provision of law requires:

- i. Interest of public safety or,
- ii. convenience or,
- iii. because of the nature of any road or bridge.

Therefore, the powers provided in the said section of law has to be applied with the qualifying requirements and it requires further interpretation of terms i.e. “interest of public safety”. The term “public safety” has neither been defined independently in this law nor the question of “interest” has been defined in any separate manner, therefore, while considering the rules of interpretation, this Court has to define those terminologies with reference to their basic meanings as referred in the Oxford Thesaurus of English wherein “**public**” means “people and citizens” whereas “**safety**” means “welfare, wellbeing, protection, security” and “**interest**” means “the feeling of wanting to know or learn about something or someone”.

10. The above referred meanings of the three terms “interest of public safety” clearly establishes that the competent authority under this law has to look into the general welfare of citizens at large while considering their wellbeing, protection, and security which must be explained, defined and interpreted in their favour as in majority of the countries in the world the concept of public safety has to be given a separate special meaning by way of establishing a separate department by the State which shall ensure all kinds of efforts of public safety.

11. In view of above background, the parliament has extended the powers of assessment of public safety and its convenience while considering the larger interest to the Government or to any agency authorized by it means that Government itself has to consider each and every aspect after its detail study including the number of vehicles, passengers, road users, traffic accidents, and general behavior of the motorists whereas the legislative intent is clear while empowering the two different authorities for laying down the parameters firstly to the Government or any other agency. However, interestingly the act is silent qua the term “agency” and it does not refer the NH&MP in any way rather it could be any other agency notified by the Government. Whereas, in this case the respondents could not demonstrate as to whether any such exercise has been done separately in terms of Section-45 to study all these concepts of public safety or convenience whereas the NH&MP has been established separately in terms of Chapter-VII under Section-90 of the Ordinance with the powers referred as under:

**90. Establishment of a Police for National Highways:-**

- (1) *The Government may 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.*
- (2) *The police force established under sub-section(1) shall exercise all powers of a Station House Officer under the Code of Criminal Procedure, 1898 (Act V of 1898), Police Act 1861 (V of 1861) and 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. 011 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;*
- (3) *Without prejudice to the powers conferred on it or under this Ordinance the Government may, in relation to the National Highways and Pakistan Motorway Police exercise all powers, which under the Police Act, 1861 (V of 1861), and the Code of Criminal Procedure, 1898 (Act V of 1898), are exercisable by a Provincial Government in relation of the provincial police.*

12. Besides the above referred powers, the Inspector General of Police in consultation with the Government by notification in the official gazette may make rules for carrying into effect the provisions of Chapter-VII under Section-93 whereas such rules may provide for all or any of the following matters as specified in Section-93(2), namely:-

- (a) *For the efficient and effective discharge of duties by the force;*

- (b) *Discipline, apparel, recruitment, induction, promotion, transfer and appointment;*
- (c) *Procedure for employing experts and entering into contracts with various agencies;*
- (d) *Procedure for investigation of offences, regulation of traffic and evaluation of facilities, boarding and route permits;*
- (e) *Manner, mode and type of licenses for the national highways;*
- (f) *The manner in which rewards may be given to the members of the National highways and Pakistan Motorway Police for rendering commendable services; and*
- (g) *Any other matter which may be prescribed.*

13. The above referred background of law clearly establishes that there is no exclusive authority with Inspector General of Motorway Police to pass any direction or order besides his rule making authority within the limited scope even though no specific rules have been placed before this Court in terms of Section-93 by the respondent side. However, the said Ordinance contains twelve different schedules wherein standard penalties, point system for traffic violation, major violation and penalties, hands signals and concept of driving on/off roads vehicle, traffic signs, as well as national highway users have been defined including the test of competence to drive whereas the most important portion related to instant case has been defined in the 8<sup>th</sup> Schedule, Part-VII (For Driving on Motorway). For ready reference, the same has been reproduced as under:

- (1) *Entry of animal drawn vehicles, farm machinery including tractor, harvester, etc and construction machinery including roller and bulldozers on any part of the motorway including slip way and shoulders, etc is prohibited.*
- (2) *Do not walk along any part of the motorway including shoulders and slipway except:- i. In case of emergency, walk on the shoulders to reach the nearest point for help; ii. To retrieve an object which is a source of hazard to the traffic, provided approaching traffic is at a safe distance and it is not a very busy motorway;*
- (3) *Do not enter the motorway except at the designated points. When joining the motorway, approach from the slip road on the left, check the traffic already on the motorway, adjust your speed, look over the right shoulder or outside mirror and join only when there is a safe gap between you and the approaching traffic.*
- (4) *Always drive in the assigned lane except when necessary to overtake. Do not weave in and out of lanes.*
- (5) *Transport vehicles and vehicles drawing a trailer are prohibited to use any lane other than the extreme left lane except for overtaking or when otherwise unavoidable in the interest of safety.*

- (6) *Park only in the areas specially designated for the purpose and in the service areas.*
- (7) *Do not park on any part of the motorway including shoulder, slip way or central reserve.*
- (8) *In case of breakdown, move the vehicle immediately on to the shoulder, turn on the hazard warning lights and place the red warning triangle 50-100 meters back from the rear of the vehicle.*
- (9) *Change lane only when it is necessary and do not change more than one lane at a time.*
- (10) *Never reverse or drive in the direction opposite to the traffic, even on the shoulders or slip way.*
- (11) *Do not cross the central reserve (median) to make U-turn.*
- (12) *Do not drive slower than the posted minimum speed limit unless dictated by the traffic conditions.*
- (13) *Don't overtake using extreme left lane or the shoulder.*
- (14) *Overtake only on the right unless traffic is moving in queues and the queue on your right is moving slower. Don't move to a lane on your left to overtake.*
- (15) *Take special care at road works. One or more lanes may be closed to traffic. Slow down and merge with traffic on adjoining lanes only when a safe gap becomes available. Don't force your way into other traffic.*
- (16) *Don't stop on a slip road or on any other part of the motorway (including shoulder) to pick up set down anyone.*
- (17) *Leave the motorway by a slip road on your left when a sign indicates so. Move into it well before reaching your exit and stay in it. Signal left in good time and slow down to the exit speed of the slip way or ramp.*
- (18) *All the rules other than those concerning particular class of road users or situations apply to motorway driving.*
- (19) *Don't use any kind of phone inside a vehicle in any manner, which is likely to adversely affect driving concentration.*

14. In view of above, special mode has been provided for driving on motorways whereby a driver has to follow these codes which do not in any manner restrict the use of motorcycle rather it gives standard driving parameters while considering the safety and convenience of every individual using the motorways whereas Clause-1 restricts entries of vehicles such as animal drawn vehicles, farm machinery including tractor, harvester, etc. and construction machinery including roller and bulldozers but there is no restriction on "motorcycle" or "motorcyclists" under the said clause. I have asked the motorways police officials to provide any instance of prohibition whereby riding of motorcycle is prohibited whereupon the officials have only referred the powers under Section-45 read with Section-90(2)(a) whereby the motorway police

have been empowered to regulate and control traffic on motorways and prevent obstructions thereon, whereas the term “regulate” means “to supervise, oversee, superintendent, monitor, keep an eye, inspect, and administer” and “control” means “a direction in guidance, power, authority, command in domination”. All these terms used by the legislator in the said sections of law only give an impression that motorway police is established to manage the affairs of motorways and national highways while keeping the safety standards and in this regard a complete code has been provided in this law, however the law does not prohibit any restriction on motorcycle except with special vehicles which have been defined in the Schedule given above.

15. The respondents have also placed a document called Code of Highways and Motorway [شاہراہوں اور موٹروے کا ضابطہ] and as per their own interpretation the said document is mandatory on all persons who are using the motorways as it covers minimum standards of driving in different seasons/weather, concept of lane changes, speeds, bus lanes, and the concept of signals with punishment details including the signage provided at the end of the said Code. On the other hand, the NH&MP official has drawn attention of this Court towards a mandatory sign board showing no entry of motorcycle and cycle and as per the stance taken by the motorway police that all motorways have been erected with these signs in terms Section-46 of the Ordinance whereby the motorway police can erect the traffic signs for the purpose of regulating road vehicle traffic but surprisingly the power is vested with Government or any agency authorized by it in this behalf, does not empower motorway police to erect any sign as per their own wish and will or for that matter the sign board could not be erected unless such restrictions have been imposed in this law. The erection of sign by the Government or by any agency on its behalf is altogether different concept which is only meant to exercise State authorities and such kind of signage erection in terms of Section-46 could not be made by any individual or by any other office

under their own whims and convenience as it is only permissible to two authorities i.e. the *Government* and any *agency* authorized by law.

16. The NH&MP official has also drawn attention of this Court towards Serial No.202 of the [شاہراہوں اور موٹروے کا ضابطہ], (hereinafter, "*the Code*") which is reproduced as under:

عمومی ہدایات  
202۔ موٹروے پر پیدل چلنا، سائیکل، سکوتر، موٹر سائیکل یا موپڈ (MOPED) عارضی عبوری لائسنس پر گاڑی، ہتھ ریڑی یا کسی جانور سے کھینچی جانے والی گاڑی، اپاہج افراد کے لئے بنائی گئی چند مخصوص سست رفتار گاڑیاں، زرعی اور تعمیراتی مشینری والی گاڑیاں، ٹینک یا بکتر بند گاڑی چلانا اور جانوروں پر سوار ہوکر چلنا یا انہیں ہانک کرلے جانا ممنوع ہے۔ زیادہ وزنی اور غیر معمولی چوڑی (30-4 میٹر سے زیادہ چوڑی اور 100 ٹن سے زیادہ لوڈ والی) گاڑیاں پولیس کی اجازت اور نگرانی میں موٹروے استعمال کرسکتی ہے۔

The above referred instructions have been expressed by the motorway police themselves which are not in line with the NH&SO, 2000 in which restriction to the extent of motorcycle has not been provided and which has been included by the motorway police themselves in the above referred Code. Even otherwise, the documented book i.e. Code, has been prepared for general public consumption and certain things have been discussed and written beyond the scope of law which is not the mandate and not even authorized or permissible in any manner. I have asked Inspector of the NH&MP as well as DAG to justify the Serial No.202 of the Code with reference to the NH&SO, 2000 regarding ban on motorcycle whereas they have failed to submit any legal justification for incorporation of this portion.

17. At Serial No.202 of the Code whereby restriction has been imposed on the usage of motorcycles on the motorways is also not proportionate to the NH&SO, 2000, especially when the parent law does not provide any such restriction in any manner, therefore, while considering the doctrine of proportionality, only reasonable restrictions could be imposed which have been provided in the law, otherwise, it falls within the concept of unreasonableness and the authority, which exercises its powers, should consider this aspect on rationale basis and should adopt such means not to injure individuals more than necessary and any

such injury caused to individuals by the exercise of authority should not be disproportionate to the benefit which accrued to the general public. All these concepts have been highlighted in the administrative actions by different authors. Similarly, restrictions on the fundamental freedom can only be imposed by legislation and in cases where legislation is made the restrictions have to be reasonable and equated with the fundamental rights, therefore, the principle of proportionality emerges in such situation and the burden of proof to show that restriction was reasonable lay is on the State. The concept of “reasonable restrictions” has been discussed in the case titled as Chintaman Rao vs. The State of U.P. (1950 SCR 759) in the following manner:

*“.....‘reasonable restrictions’ which the State could imposed on the fundamental rights should not be arbitrary or of an excessive nature, beyond what is required for achieving the object of legislation. ‘Reasonable’ implied intelligent care and deliberations, that is, the choice of a course which reason dictated. Legislation which arbitrarily or excessively invaded the right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control permissible.”*

The concept of proportionality means whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measure has to be made by the legislature or the administrator so as to achieve the objective of legislation or the purpose of administrative order, as the case may be. Under the principle, the Court will see that legislature and the administrative authority maintain a proper balance between the adverse affects which the legislation or the administrative order may have on the rights, liberty, or interest of persons keeping in mind the purpose which they were intended to serve. The legislature and the administrative authority are, however, given an area of discretion or range of choices but as to whether the choice made infringes the rights excessively or not is for the Court. That is what meant by proportionality. Reliance is placed upon 2001 (2) SCC 386 Supreme Court of India (Om Kumar vs. Union of India).



18. Similarly, in another reported judgment of the House of Lords referred as 2001 UKHL 26 (R. (Daly) vs. Secretary of State for the Home Department), it has been held that:

*"27. The contours of the principle of proportionality are familiar. In de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69 the Privy Council adopted a three-stage test. Lord Clyde observed, at p 80, that in determining whether a limitation (by an act, rule or decision) is arbitrary or excessive the Court should ask itself:*

*"whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental rights; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective."*

In view of above background, I am of the view that the restrictions imposed by the motorway police is disproportional to the constitutional guarantees and even not provided in the parent statute, i.e. the NHSO, 2000.

19. The other principle of interpretation which has been discussed and argued before this Court is regarding the subordinate legislation which should promote the purpose of the statute and in this case the parent statute is the NHSO, 2000 which covers the entire subject and the discretionary powers exercised by the Motorway Police are not so widened to impose ban as per the Code whereas the apex Court in case reported as 2015 SCMR 630 (Muhammad Amin Muhammad Bashir vs. Government of Pakistan) has explained the basic principles of discretionary powers in the following manner:

*"9. ....The exercise of any discretionary power must be rational and have a nexus with the objective of the underlying legislation. Arbitrariness is the antithesis of the rule of law. The legislature, when it confers a wide ranging power, must be deemed to have assumed that the power will be, firstly, exercised in good faith, secondly, for the advancement of the objects of the legislation, and, thirdly in a reasonable manner. Section 24A of the General Clauses Act, 1897, reiterates the principle that statutory power is to be exercised "reasonably, fairly, justly and for the advancement of the purposes of the enactment" and further clarifies that an executive authority must give reasons for its decision. Any action by an executive authority which is violative of these principles is liable to be struck down. No other view is permissible."*

10. In the well known case of *"Amanulla Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance,*

*Islamabad and others (PLD 1990 SC 1092)" this Court laid down the principle of sinicured discretion.*

*"Wherever wide-worded powers conferring discretion exist, there remains always the need to structure the discretion and it has been pointed out in the Administrative Law Tax by Kenneth Culp Davis (page 94) that the structuring of discretion only means regularizing it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure. Somehow, in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalize it and regulate it and regulate it by Rules, or Policy statements or precedents, the Courts have to intervene more often, than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times."*

Besides the above referred discussion on discretion, the instrument of delegation of powers must be construed strictly whereas the I.G. of Motorway Police has not been delegated with powers to impose restrictions contrary to the mandate of law, even otherwise, the delegatee can neither go beyond delegated powers nor delegates the powers vested in him. Reliance is placed upon **2014 CLC 1051 SC AJK (Ch. Allah Ditta vs. Muhammad Azeem Bhatti and 15 others)**.

20. This Court has also noticed that the Motorway Police initially allowed bikers to use motorways on 05.03.2010 after having meetings with bikers club whereby the access to bikers to ply their motorcycles on motorways remained in field till 25.06.2013. However, the same was discontinued on verbal direction of the I.G. of NH&MP and even the petitioner and the Lahore Bikers Club were neither given any opportunity to explain their position nor they were allowed to tender their point of view whereas it is settled law that verbal orders and directions have no legal sanctity in the eyes of law as held in **PLD 2012 Lahore 515 (Ms Hudabiya Paper Mills Ltd. vs. NAB)** wherein it has been held as under:

*"Section 24 of the General Clauses Act, 1897 provides that power to make any order or give any direction conferred on any authority, office or person, must be exercised reasonably, fairly, justly and for the advancement of the enactment. Inbuilt, in this, is the self-evident and unquestionable requirement that the decision or order must be in*

WRITING. Written order identifies its author and its recipient, written form is the only medium that brings to fore the reason behind the order and it is the order in writing that undergoes accountability of judicial review. Therefore, for an order to be in writing is integral to good governance and the rule of law. Verbal Order of a public functionary has no legal existence and does not constitute an order. Running of the government on verbal orders amounts to domesticating the government into a personal fiefdom and trivializing the affairs of the State into a household affair, which cannot be permitted. Hence, governance through verbal orders is bound to be chaotic, corrupt, disorderly and unaccountable. In short, a system based on verbal orders in the public sector can take the country through "a short route to chaos." Verbal orders in the affairs of government or the public sector have no sanctity of law."

The above referred standpoint has also been acknowledged in 2007 SCMR 1328 (CDA vs. Ms. Shaheen Farooq and another), 2013 PLC (CS) 162 [Islamabad] (Kalim Ullah Khan vs. Secretary CADD), and 2006 PLC (CS) 200 [Karachi] (Abdul Hameed vs. Sindh Agriculture University, Tando Jam).

21. The Motorway Police placed the letter dated 11.07.2013 on record which is the source document providing a reason of plying motorcycle on motorways the same is hereby reproduced as under:

OFFICE OF THE  
DEPUTY INSPECTOR GENERAL OF POLICE MOTORWAY  
NATIONAL HIGHWAYS & MOTORWAY POLICE  
H. NO.37, STREET NO.08, SECTOR F-11/1  
ISLAMABAD  
\*\*\*\*\*

No. NH&MP-10(44)/DIG(M)/13-932

Dated, 11<sup>th</sup> July

The Inspector General,  
National Highways & Motorway Police,  
ISLAMABAD.

Subject: HEAVY MOTORBIKES ON THE MOTORWAY.

Kindly refer to our telephone conversations dated 10<sup>th</sup> July 2013 and your Diary No.2209 dated 8<sup>th</sup> July 2013 forwarded therein a request from President Lahore Club to review the ban on motorcycles on motorway.

2. Chapter-V (Control of Traffic) Section-45 (Power to restrict the use of vehicle) NHSO-2000 provides the following:-

"The Government, or any agency authorized by it in this behalf, if satisfied that it is necessary in the interest of public safety or convenience, or because of the nature of any road or bridge, may prohibit or restrict, subject to such exceptions and conditions as may be specified, the driving of motor vehicles or of any specified road or bridge and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or

*erected under section 46 at suitable places in such places in such area or on or near such road or bridge as the case may be."*

3. *Initially all types of motorbikes were banned to ply on motorway except patrolling motorcycles (Shaheen) and informatory signboards were installed at appropriate places accordingly but during a meeting held on 05-03-2010 with representative of Biker's Club, the former IGP, NH&MP allowed to ply the motorcycles on motorway. A motorcycle rally was organized on the National Day of Pakistan 23th March 2010 from Toll Plaza to Kallar Kahar. Thereafter, proper SOP was formulated (copy enclosed) practice was banned in compliance of your orders on 25-06-2013.*

4. *Having been found a traffic hazard, it is recommended that the Lahore Biker's Club to review ban on motorcycles on motorway may not be acceded and the decision of ban may be kept upheld, please.*

The above referred letter of the Motorway Police is based upon two separate reasons, *firstly*, the terms of Chapter-V (Control of Traffic) Section-45, (Power to Restrict the Use of Vehicle) under the NH&SO, 2000 and *secondly*, "having been found a traffic hazard". I have gone through the provisions of Section-45 as also referred in Para-9 of the instant judgment which deals with the public safety or convenience and it is for the purpose to regulate in specific conditions attached with peculiar circumstances, even otherwise, the NH&MP has not been extended with unbridled powers to proceed in a manner not permissible under the law nor Motorway Police is allowed to interpret the same as per their own choice whereas it is trite law that public authorities are only permitted to do what is authorized to them by law. A public authority, if entrusted by the legislation with certain powers and duties, expressively or impliedly, for the sole purpose of public, cannot divest themselves of such powers and duties, even they are not allowed to take any action incompatible or in violation of their basic duties, even otherwise, there are no inherent powers available to the Motorway Police to impose a ban on the strength of Section-45 of the NH&SO, 2000 by stretching the said provision contrary to its scope and they have not been allowed to exercise jurisdiction which is not vested to them. The law does not provide vague, indefinite and wide powers to I.G. of Motorway Police, especially when dealing with the rights of citizens and any such proposed ban amounts to contravention of fundamental rights as all citizens have inalienable rights to be treated in accordance with law. Reliance is placed upon *PLD 2007 SC 642 (Pakistan*

*Muslim League vs. FOP*, and 1997 SCMR 641 (M/s. Hudood Textile Mills Ltd. vs. WAPDA).

22. The Motorway Police have initially allowed the bikers to use motorways and subsequently disallowed them on the standpoint that “having been found a traffic hazard”, although I have asked the Motorway Police authorities on a number of occasions to justify their action and provide the details of the period of three years when bikers were allowed to ply motorcycles on the motorways but they failed to provide any statistical data causing loss of any human life on account of mistake or fault rooted by a bike rider or for that matter any biker had suffered any injury. In addition, the Motorway Police authorities argued their case that motorcycles are the most dangerous mode of transportation in entire Pakistan and that the requisite safety features are not available with bikers to avoid any loss. This Court has also asked the motorway authorities as to whether they had placed any ban on national highways or any other main roads from Khyber to Karachi, whereby they answered in negative, and even the Motorway Police have failed to provide rationale and objective criteria through which they can justify the restrictions in any manner that if motorcycles are hazardous under any safety standard the same could not be permitted on any road of Pakistan, may that be a motorway, national highway or any other road. On the other hand, Motorway Police have also failed to submit any details to justify their second reason of traffic hazards in any manner except their own hypothetical stance which is without any basis or data.

23. I have also gone through regional and international models to understand the concept of restriction in other countries of the world whereas the following list demonstrates access regulation to motorcycles for the use of motorways:

#### Access Regulation

*Freeway access regulation for motorcycles differs from country to country. In most countries, regulation is based on [engine displacement](#).<sup>[1]</sup>*

- (■) : Enabled for motorcycles driven on the freeway and expressway
- (■) : Prohibited for motorcycles driven on the freeway and expressway (except for emergency motorcycles)

- (🇯🇵) :
  - Prohibited for motorcycles driven on most (or some) freeways and expressways, but now enabled in at least some cases.
  - Prohibited for motorcycles driven on the freeway, but enabled for motorcycles driven on the expressway

Countries	Access Status	Conditions necessary for access (based on engine displacement)	Note
 Austria	Enabled	More than 49cc or 50cc	 EU Member state
 Australia	Enabled	More than 49cc or 50cc	
 Belgium	Enabled	More than 49cc or 50cc	 EU Member state
 Bolivia	Enabled	All	
 Brazil	Enabled	More than 49cc or 50cc	
 Bulgaria	Enabled	More than 49cc or 50cc	 EU Member state
 Canada	Enabled	More than 49cc or 50cc	
 China	Prohibited <i>de facto</i>	Vehicle is allowed to drive over 70 km/h <i>de jure</i> <sup>[2]</sup>	In fact, there is no letter of the law to Prohibit motorcycles access on freeways, it's legal to drive motorcycle which can exceed 70 km/h on freeway <i>de jure</i> . <sup>[2]</sup> But many provinces have made other laws to restrict motorcycle on freeways. <sup>[3]</sup>
 Chile	Enabled	More than 49cc or 50cc	
 Czech	Enabled	More than 49cc or 50cc	 EU Member state
 Denmark	Enabled	More than 49cc or 50cc	 EU Member state
 Finland	Enabled	More than 49cc or 50cc	 EU Member state
 France	Enabled	More than 49cc or 50cc	 EU Member state
 Germany	Enabled	Vehicle is allowed to drive over 60 km/h	 EU Member state
 Hong Kong	Enabled	More than 125cc	
 Hungary	Enabled	More than 49cc or 50cc	 EU Member state
 India	Enabled	More than 349cc or 350cc	
 Indonesia	Prohibited		Prohibited day: unknown
 Ireland	Enabled	More than 49cc or 50cc	 EU Member state
 Italy	Enabled	More than 149cc	 EU Member state, sidecar more than 249cc
 Japan	Enabled	More than 125cc	
 Luxembourg	Enabled	More than 49cc or 50cc	 EU Member state
 Malaysia	Enabled	More than 49cc or 50cc	
 Mexico	Enabled	More than 49cc or 50cc	
 Netherlands	Enabled	More than 49cc or 50cc	 EU Member
 Norway	Enabled	More than 49cc or 50cc	
 New Zealand	Enabled	More than 49cc or 50cc	
 Pakistan	Prohibited		Motorcycles are not allowed access to any <i>motorway of Pakistan</i> , regardless of <i>engine displacement</i> .
 Peru	Enabled	More than 49cc or 50cc	
 Philippines	• Enabled	More than 400cc	<ul style="list-style-type: none"><li>• Date of motorcycle driving prohibited in motorway: 19 February 1968</li><li>• Lifted date of motorcycle driving prohibition in motorway: 2001 (above 400cc),<sup>[4]</sup>2006 (some tollways)<sup>[5]</sup></li></ul>

Countries	Access Status	Conditions necessary for access (based on engine displacement)	Note
 Poland	Enabled	More than 49cc or 50cc	 EU Member state
 Portugal	Enabled	More than 49cc or 50cc	 EU Member state
 Romania	Enabled	More than 49cc or 50cc	 EU Member state
 Russia	Enabled	More than 49cc or 50cc	
 Singapore	Enabled	More than 49cc or 50cc	
 Slovakia	Enabled	More than 49cc or 50cc	 EU Member state
 Slovenia	Enabled	More than 49cc or 50cc	 EU Member state
 South Africa	Enabled	More than 49cc or 50cc	
 South Korea	Prohibited		1. Motorcycles' access on <b>expressways</b> ( <b>고속도로</b> gosok doro) was prohibited by a Notice of the Ministry of Home Affairs on June 1, 1972 <sup>[6]</sup>  2. Motorcycles' access on expressways and semi-expressways ( <b>자동차전용도로</b> jadongcha jeonyong doro, literally 'motor vehicles only road') was prohibited by a Road Traffic Act amendment in 1992 <sup>[7][8]</sup>
 Spain	Enabled	More than 49cc or 50cc	 EU Member state
 Sweden	Enabled	More than 49cc or 50cc	 EU Member state
 Switzerland	Enabled	More than 51cc and vehicle is allowed to drive over 80 km/h <sup>[9]</sup>	
 Taiwan	Enabled(But not accessed)	More than 550cc	1. It has been banned since the opening of the first freeway. (MacArthur Freeway, May 2, 1964) It was subsequently banned explicitly in the law for expressway and freeway on April 10, 1974.  2. The ban was lifted for motorcycles above 550cc for expressways on Nov 1, 2007 and also for 250cc and above on Jul 1, 2012. However it is pending announcement for special access sections and times by the Ministry of Transportation, which has not make any announcement yet, effectively keeping the ban active.
 Thailand	Prohibited		Prohibited day: unknown
 Turkey	Enabled	More than 49cc or 50cc <sup>[10]</sup>	
 United States	Enabled	More than 49cc or 50cc	Some <b>states</b> prohibit <b>motor-driven cycles</b> (under 125cc or 150cc) or <b>low-horsepower</b> motorcycles (example: motorcycle less than 5 HP)
 United Kingdom	Enabled	More than 49cc or 50cc	 EU Member state
 Venezuela	Prohibited		Prohibited day: unknown
 Vietnam	Prohibited		Prohibited day: unknown

References:

- World motorcycle facts & figures (Honda).
- (in simplified Chinese)Regulation on the Implementation of the Road Traffic Safety Law of the People's Republic of China, chapter 4, section 5, article 78.
- (in simplified Chinese)"小伙骑摩托去西藏高速路上被拦". sina.com.cn. Retrieved 28 July 2016.
- The History of the Ban on Motorcycles Using the Tollways Motorcycle Philippines.

5. *Supreme Court Strikes Down Motorcycle Ban on Tollways Motorcycle Philippines.*
6. *"Motorcycles and Three-wheeled Vehicles Prohibit access in Expressways from June 1<sup>st</sup>". Mael Business Newspaper (in Korean). 23 May 1972.*
7. *(in Korean) Article 58 of the South Korea Road Traffic Law (enforced on March 15 1992)*
8. *(in Korean) Article 63 of the South Korea Road Traffic Law (enforced on June 1 2006)*
9. *Art. 35, Abs. 1 and 2, Verkehrsregelnverordnung vom 13. November 1962 (VRV)*
10. *"Hiz Sinilari". T.C Karayolları Genel Mudurlugu. Retrieved 23 January 2016.*

24. This Court has also gone through the Convention on Road Traffic, Vienna 8<sup>th</sup> November, 1968, which is meant to facilitate the international road traffic and to increase road safety through adoption of uniform traffic rules. The convention provides and defines the concept of roads, motorways, speed, limitations, signage, rules applicable to pedestrians, regulations, special rules for handicaps, cyclists, motor drivers and motor cyclists whereas neither I found any restrictions against motorcyclists nor the Convention provides any such concept which has been used by the I.G. of Motorway Police in Pakistan, except in Annexure-1 of the Convention where it was held that:

3. *Contracting Parties may refuse to admit to their territories in international traffic the following combinations of vehicles insofar as the use of such combinations is prohibited by their domestic legislations:*

- (a) *Motorcycles with trailers;*
- (b) *Combinations of vehicles consisting of a motor vehicle and several trailers;*
- (c) *Articulated vehicles used for passenger transport.*

4. *Contracting parties may refuse to admit to their territories in international traffic the motor vehicles and trailers to which the exceptions specified in paragraph 60 of Annex 5 to this Convention are applicable.*

5. *Contracting Parties may refuse to admit to their territories in international traffic mopeds and motorcycles whose drivers and passengers, if any, are not equipped with protective helmets.*

6. *Contracting Parties may make it a condition for the admission to their territories in international traffic of any motor vehicle other than a two-wheeled moped or a two-wheeled motorcycle without side-car, that the motor vehicle shall carry a device referred to in paragraph 56 of Annex 5 of this Convention, to give warning of the danger constituted by the vehicle's presence when it is stationary on the carriageway.*

7. *Contracting Parties may make it a condition for the admission to certain difficult roads or to certain areas of difficult terrain in their territories in international traffic of motor vehicles with a permissible maximum mass exceeding 3,500 kg, that such vehicles shall comply with the special requirements laid down in their domestic legislations concerning the admission to such roads or areas of vehicles of the same permissible maximum mass registered by them.*

8. *Contracting Parties may refuse to admit to their territories in international traffic any motor vehicle equipped with passing lamps with*



*asymmetric beams if such beams have not been adapted to suit the direction of traffic in their territories.*

9. *Contracting Parties may refuse to admit to their territories in international traffic any motor vehicle, or any trailer coupled to a motor vehicle, which displays a distinguishing sign other than one of those prescribed in Article 37 of this Convention. Contracting Parties may not refuse admission to a vehicle which has a distinguishing sign placed separately from the registration plate in conformity with the provisions of this Convention substituting a distinguishing sign which is incorporated into the registration plate and which is not in conformity with the provisions of this Convention."*

The above referred restrictions are supported with only one condition, i.e. "**such combination is prohibited by their domestic legislation.**" This clearly establishes that unless the domestic legislation provides such kind of bans, no one is permitted to restrict the right of movement in any manner, even otherwise, the concept to regulate the traffic means to provide safety standard which was initially applied by the then I.G. of Motorway Police in the year 2010 when SOP for bikers to ply on motorways was framed whereby following procedures were devised:

1. *No rider below the age of 30 years will be allowed to ride a motorbike on the Motorway.*
2. *Motorbike riding will be allowed in light hours only.*
3. *Visible reflectors should be displayed at the back of motorcycle.*
4. *Motorcycle will carry a single rider only.*
5. *Motorcycle will bear side view mirrors.*
6. *Rider will wear safety reflecting jacket at all the times.*
7. *Only motorbikes above 600cc engine displacement will be allowed on the Motorway.*
8. *Motorbikes should be duly registered with Registration Authority, Government of Pakistan, bearing a valid number plate.*
9. *Motorbikes should be in perfect working order.*
10. *Motorbikes' front and rear tyre must have at least 1mm of tread remaining.*
11. *Lights and indicators of the Motorbike should be in perfect working order.*
12. *Brakes of the motorbike should be fully functional and operative.*
13. *The headlights of the motorbike shall remain ON to enhance its visibility for other road users.*
14. *The rider must hold a valid license to ride a motorbike.*
15. *The rider must wear protective headgear which fits snug and meets international standards.*
16. *The rider must wear protective clothing, a one piece or two piece riding suit, with protection at the back, elbow, shoulders, knees and hips.*

17. *The rider must wear boots which cover the entire ankle, the heel and toe must be reinforced to have extra protection.*
18. *Reinforced gloves will be worn to protect the hands.*
19. *The motorbikes will be subject to all the rules governing the use of Motorway as applicable to cars.*
20. *The maximum speed limit will be 110 km/h.*
21. *The motorbike will use lane on extreme left (Lane # 1) for normal operation and center lane (Lane # 2) for overtaking.*
22. *Single motorcycle will operate in the middle of the lane and not share the lane with four wheeled vehicles. However, where safe, two motorcycle may share the lane by one rider riding close to the left line and the other rider riding close to the right line in the same lane.*
23. *It is riders' responsibility to ensure enhanced visibility for other road users.*
24. *The rider must undergo and successfully complete orientation training, arranged at National Highways & Motorway Police Training Institute, Sheikhpura before riding on Motorway.*

24. The above referred SOP has been followed by the bikers and they have also been issued Biker Card whereupon bikers with view to ply on the motorways have managed and obtained bikes with engine capacity of 600cc and plus, even otherwise, the Motorway Police have also sought declaration from every biker in the following words:

**Declaration**

*I have read the SOP for motorcycle operation on Pakistan motorways.  
Below than 500cc bikes are prohibited on motorways. This card is  
acceptable in original.*

The above referred fact regarding working of Motorway Police and permissions to the bikers extends the doctrine of legitimate expectation for which the Motorway Police could not be allowed to alter the rights or obligations in any manner contrary to their acknowledged rights as the usage of motorways for three years by bikers give legitimate expectation in their favour. Reliance is placed upon (1998) 7 SCC 66 [National Buildings Construction Corporation vs. Raghunathan], (1985) A.C. 374 [Council of Civil Services Union vs. Minister for Civil Services], and PLD 2011 Lahore 160 (Muhammad Nawaz Malik vs. Government of Punjab).

25. Besides the above referred position, it has further been observed from the record that the NH&MP while exercising their powers under Section 93 of the NHSO, 2000 suggested the amendments in the DLA Rules, 2014 which were earlier notified by the Government of Pakistan vide gazette notification dated 20.03.2015. The proposed amendments in view of Section 93 recommended by the NH&MP have been suggested vide letter dated 31.09.2015 while considering the safety measures the consultative amendment along with the letter has been reproduced as under:

*Subject:* **AMENDMENT IN THE NATIONAL HIGHWAYS & MOTORWAY POLICE DRIVERS LICENCING AUTHORITY RULES - 2014.**

*Please refer to the subject noted above.*

2. *Keeping in view the emerging requirements, NH&MP being a forward looking department has established its Drivers Licencing Authority (DLA) at Islamabad last year. It was a right step in the right direction at the right time. In exercise of the powers conferred by Sections-17 and 90(2)(q) of the National Highway Safety Ordinance (NHSO)-2000 (Annex-A) NH&MP Drivers Licensing Authority Rules-2014 have been notified vide S.R.O. No.37(KE) 2015 dated 29th December, 2014.*

3. *Taking into consideration safety and security of commuters, the motorcyclists were not allowed to ply on Motorways. Contrary to this, heavy bikes / motorcycles (above 500 cc) are allowed on major Highways and Motorways all over the world. Therefore, the Pakistani bikers were also provided with the opportunity to ride on Motorway from 2010 to 2013. According to NHSO-2000, Chapter-1 Section (2) Clause (xxxi) Motor cycles are defined as any two wheeled vehicle, with or without a side car, which is equipped with a propelling engine but does not include a moped. Furthermore, motorcycles have been classified into two wide categories i.e. motorcycles up to 80 cc and Motorcycle more than 80 cc vide NHSO-2000, Chapter-2 Section (7) Sub-Section (2) Clauses (a&b). The category of Motorcycle has been divided into two types in Schedule-IV of DLA Rules-2014(i.e. Up to 125-cc and More than 125-CC) (Annex-B).*

4. *Now, various individuals and bikers especially Lahore Bikers Club are again demanding permission to ride their bikes on Motorway. Keeping in view their incessant requests, a number of meetings were held with members of aforementioned club. Besides said meetings and keeping in view the international best practices, road tests for heavy bikes have also been conducted in order to check viability of heavy bikes on Motorway. Taking into account the same, Lahore Bikers Club withdrawn their writ petition bearing No.W.P. No.32108/2014 from the Lahore High Court, Lahore (Annex-C).*

5. *Bearing in mind their demand, Rules for Motorcyclists (Annex-D) are prepared and proposed for approval of the competent authority. It is suggested in the said rules that the bikers who are older than 35 years of age and posses computerized driving license issued from NH&MP DLA for riding Motorcycle under Category A (i.e. 500 cc and above) may be allowed to ride on Motorways after taking appropriate Safety Measures. Moreover, as per NHSO-2000 vide Chapter-3 Section*

(18) Clause (1) driving/riding of any road vehicle is prohibited without registration on Motorway/Highways.

6. Section-93 of NH&MP-2000 provides:

(1) "The Inspector General of Police, in consultation with the Government, may, by notification in the official Gazette, make rules for carrying into effect the provisions of this Chapter"

(1)(e) "Manner, mode and type of licenses for the national highways"

7. Therefore, it is requested that the proposed rules (Annex-D) are required to be incorporated in NH&MP DLA Rules-2014. It is also requested that the proposal in this regard may kindly be forwarded for formal approval of the competent authority.

8. An early action is requested.

**DEPUTY INSPECTOR GENERAL**

(Operation & Evaluation)

For Inspector General, NH&MP.

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**Addition required in DLA Rules-2014**  
(FOR MOTORCYCLES)

*Sub-Section 8 (a) Regular License for Motorcycle*

(1) There shall be three (03) categories of Motorcycle licenses, namely:-

- (a) An applicant having 18 years age shall be eligible to apply for Motorcycle License Category C Motorcycle License (not more than 125cc power and up to 11KW);
- (b) An applicant having 25 years age and having Motorcycle Licence Category C shall be eligible to apply for Motorcycle Licence Category B (power not exceeding 500cc and up to 35KW);
- (c) An applicant having 35 years age and having Motorcycle Licence Category B shall be eligible to apply for Motorcycle Licence Category A (power more than 500cc and above 35KW);
- (d) The applicant having attained the age of 24 years and valid driving licence issued from any other licencing authority under the vehicle type of Motorcycle will be considered for conversion of their existing driving licence under Category B.

*Sub-Section 8(b) General Safety Measures for Motorcyclists.*

(1) The Motorcyclists shall follow the following instructions while riding on public highways:

- a. The rider shall be medically fit.
- b. The rider shall not be under the influence of Alcohol or drugs.
- c. The rider as well as the pillion passenger shall be wearing protect headgear which fits snug and meets international standards.
- d. The rider shall be wearing eye protectors.
- e. The Motorcycle shall be in perfect running condition.
- f. The Motorcycle shall bear side view mirrors.
- g. The Motorcycle's front and rear tyre shall be at least 1mm of trek remaining.
- h. Brakes of the Motorcycle shall be fully functional.
- i. Visible reflectors shall be displayed at the back of Motorcycle.
- j. Head light, tail light and indicators shall be in working condition.

- k. *The maximum speed limit to ride a Motorcycle on highway shall be 1 Km/h.*
- l. *The rider shall be allowed to ride in light hours as well as dark hours.*
- m. *The rider shall not be allowed to carry more than one pillion passenger who shall be allowed to sit astride the machine on a proper seat.*
- n. *The rider on a two-lane dual carriageway shall be bound to stay in the left hand lane. The rider shall be allowed to use the right-hand lane overtaking, after overtaking move back to the left-hand lane when it is safe to do so.*

*Sub-Section 8(b)(i) Safety Measures for Heavy Bike Riders.*

- a. *Only Motorcycles having engine capacity more than 500cc shall allowed to travel on Motorway.*
- b. *The rider shall be wearing reflecting clothing/stripes.*
- c. *The rider shall be wearing protective clothing, one piece or two piece riding suit, with protection at the back, elbow, shoulders, knees and hips.*
- d. *The rider shall be wearing shoes which cover the entire ankle and toe must be reinforced to have extra protection.*
- e. *The rider shall be wearing reinforced gloves to protect the hands.*
- f. *The maximum speed limit to ride a Motorcycle on highway shall be 1 Km/h and on motorways, shall be 120 Km/h.*
- g. *The rider shall not be allowed to ride in adverse weather.*
- h. *The rider shall be allowed on a three-lane dual carriageway to use the middle lane or the right-hand lane to overtake but return to the middle a then the left-hand lave when it is safe.*
- i. *The headlights of the Motorcycle shall remain ON to enhance its visibility for other road users.*
- j. *It shall be mandatory for motor bike riders to have an e-tag sticker entrance and exit on motorway.*
- k. *Special permit for travelling on motorways shall also be required.*

The above referred amendment reference also declares the intention of the NH&MP to consider the rights of bikers and this entire exercise has been proposed while considering the background of safety standard which the Motorway Police think just and proper to safeguard the bikers on motorways. Even otherwise, such kind of proposed amendment which they are seeking in the DLA Rules, 2014 will further promote the regulatory framework of the Motorway Police, however the perusal of above referred amendment further suggests that the Motorway Police have not recommended any action for putting any embargo or restriction upon plying motorcycles on the motorways.

26. The other stakeholder who raised concern is the All Pakistan Goods Transport Truck Owner Association/respondent No.4 who neither justified nor even rendered any plausible reason to prevent the bikers from plying their

motorcycles on Lane-III or use of motorways except that their rides have been affected although they themselves using motorways to the extent of Lane-III. I have asked the learned counsel for respondent No.4/All Pakistan Goods Transport Truck Owner Association to provide any such data which has been collected from the motorways where any accident of a motorcycle with any heavy transport vehicle has been caused during the period of three years duly allowed to bikers to use the motorways but the learned counsel for respondent No.4 has failed to place any such statistical data on record, therefore, their arguments and grounds for imposing restriction on motorcycles are misconceived and without any basis.

27. The actions for imposing restrictions on bikers to use motorways have further raised a situation where doctrine of promissory estoppels came into play, especially when the Motorway Police have imposed a ban without justifying the concept of "traffic hazards", therefore, while relying upon the case reported as PLD 2002 SC 208 (Pakistan vs. Fecto Belarus Tractors Ltd.) PLD 2015 SC 212 (Dr. Muhammad Javed Shaffi vs. Syed Rasheed Arshad), and 1992 SCMR 1652 (Army Welfare Sugar Mill vs. FOP), this Court is of the view that all actions taken by the Motorway Police for imposition of ban is contrary to law, lacks legal backing, and is not admissible in any circumstances.

28. There is another special feature available with the NHSO, 2000 as it is in addition to and not in derogation of any other law in terms of Section-97 of the Ordinance, therefore, the provisions of the Provincial Motor Vehicles Ordinance, 1965 have also been considered effective and the same have not been repealed in any manner. I have also gone through the said Ordinance but the only prohibition provided therein is regarding driving without license or certain limitation with age. The learned DAG also placed on record the National Highways and Motorway Police Drivers Licensing Authority Rules, 2014 which were notified on 22.03.2015 whereby a special authority has been constituted which deals with licensing including different types of license.

29. In view of above background, this Court is fully convinced that NHSO, 2000 does not empower I.G. of Police to place any restriction or embargo upon the bikers to use motorways as the law does not provide such ban and the subordinate legislation has not been made till date, even majority of the countries of the world allowed different categories of motorbike for the use of motorways, whereas the DLA Rules, 2014 do not contains prohibitions or conditions for motorcycle to access motorways. It is a fundamental right of every individual in terms of Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 that he shall not be deprived of life and liberty save in accordance with law and the term “life” covers the quality life including the right to use motorways by the bikers whether it is for the purpose of travelling or for the enjoyment of plying motorcycles whereas the Motorway Police can only regulate the motorways in terms of Section 45 of the Ordinance, and not to restrict its usage permanently without any basis. The concept of public safety has to be based upon some stringent parameters which have not been described/explained before this Court and the term “regulate” used in the NHSO, 2000 can only be considered for the purpose of supervision, superintendence, and administration.

30. In view of above background, the instant writ petition is **allowed** and the verbal ban imposed upon motorcyclists by the I.G. Police as well as NH&MP is declared illegal. However, the authorities under the NHSO, 2000 can frame their rules for the betterment and safety of the individuals under the law.

**(MOHSIN AKHTAR KAYANI)**

**JUDGE**

Announced in open Court on: 19<sup>th</sup> April, 2018.

JUDGE

Khalid Z.

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