

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Writ Petition No. 3297/2019.**

**Azkar Hussain**

*Versus*

**Islamabad Capital Territory through Chief Commissioner, Islamabad, etc.**

**Petitioner by:** Syed Mujtaba Haider Sherazi, Advocate.

**Respondents by:** Mr. M. Atif Khokhar, State Counsel.  
Azhar Hussain Shah, DSP (Legal).  
Sarwar, S.I.

**Date of Decision:** 07.11.2019.

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioner has prayed for issuance of direction to the respondents to remove his name from 4<sup>th</sup> Schedule of Anti-Terrorism Act, 1997.

2. Learned counsel for the petitioner contends that name of petitioner was notified in the 4<sup>th</sup> Schedule vide Notification dated 22.01.2015 without giving him opportunity of hearing and even without confronting any incriminating material against him; that criminal case FIR No.525, dated 19.10.2014, U/S 341/188 PPC, 3 Amplifier Act, P.S. Shehzad Town, Islamabad was registered in which petitioner was acquitted vide judgment dated 13.07.2019, passed by Judicial Magistrate, Section 30 (East), Islamabad; that petitioner has been given assurance by the constitution for his religious freedom and he has been made victim only due to his arrangement of Muharram ul Haram procession in his area which has not been accepted by the respondents and as a revenge his name has been placed in 4<sup>th</sup> Schedule by the Chief Commissioner, ICT.

3. Conversely, learned State Counsel alongwith DSP (Legal) contends that petitioner is accused in two separate criminal cases vide FIR No.29, dated 17.01.2010, U/S 145, 143, 341 PPC and 144 Police Act and FIR No.525, dated 19.10.2014, U/S 341/188 PPC, 3 Amplifier Act, P.S. Shehzad Town, whereby he has been acquitted only in one case and the other case is still pending before the trial Court.

4. Arguments heard, record perused.

5. From the perusal of record, it reveals that petitioner belongs to Shia sect and is organizer of procession of Muharram ul Haram in his area, however, two FIRs were registered against him, whereby petitioner has been acquitted in case FIR No.525, dated 19.10.2014, U/S 341/188 PPC, 3 Amplifier Act, P.S. Shehzad Town vide judgment dated 13.07.2013, however, other case of similar nature is still pending. The name of petitioner was placed in the 4<sup>th</sup> Schedule by the office of Chief Commissioner, ICT vide Notification dated 22.01.2015 after registration of above mentioned FIRs.

6. I have gone through the provisions of ATA, 1997, whereas the said Act is to provide the necessary prevention from terrorism, sectarian violence and Section 11EE has been legislated whereby Federal Government is empowered to enlist a person as proscribed person in 4<sup>th</sup> Schedule on an *ex-parte* basis, if there are reasonable grounds to believe that such person is related to terrorism activities or an activist, office bearer of an associate of an organization against whom observation order has been passed in terms of Section 11D or is a member of proscribed organization in terms of Section 11B of the ATA, 1997.

7. The above mentioned requirement of law is necessary to be applied after receiving the credible information from different organization, authorities, law enforcement agencies or from any international institution

whereas in this case police officials present before the Court have stated that the petitioner is involved in two criminal cases of P.S. Shehzad Town, in which he has arranged procession of Muharram ul Haram without permission and when he was confronted regarding NOC or permission, he failed to justify his position for organizing Muharram ul Haram procession.

8. In view of the position stated by the police department, one of the criminal case vide FIR No.525, dated 19.10.2014, U/S 341/188 PPC, 3 Amplifier Act, P.S. Shehzad Town has already been decided, whereby petitioner has been acquitted by the trial Court vide judgment dated 13.07.2019, however, other criminal case is still pending before the Court but the important question raised before this Court is as to whether the requirement of Section 11EE has been justified and authorities before proceeding in the said matter verified reasonable grounds to believe, to form an opinion on the basis of information received from any credible source that petitioner is a member of any proscribed organization or involved in such activity of terrorism, when confronted the respondents have failed to place any such material before this Court through which reasonable opinion could be formulated against the petitioner.

9. In view of above background, the proposed action of placing the name of petitioner in the 4<sup>th</sup> Schedule ATA, 1997 is an illegal process as this Court is of the view that every citizen of Pakistan has been given assurance and guarantee for freedom of movement, assembly, speech and association as well as profess of religion in terms of Articles 15, 16, 17, 19 and 20 of the Constitution of Islamic Republic of Pakistan, 1973 but it has not been denied that all such practices to profess and propagate the particular sect or religion is qualified with the terms "subject to law, public order and morality".

10. As such two instances have been referred by the ICT administration regarding violation of public peace whereby one case has already been settled whereas other is pending before the competent Court and the only charge which has been reflected from the order of acquittal is the arrangement of Muharram ul Haram procession without permission and as such the said reason does not qualify to place name of any individual in the 4<sup>th</sup> Schedule with reference to Section 11EE of the ATA, 1997.

11. The provision of Section 11EE of the ATA, 1997 has been applied on *ex-parte* basis by the authorities while receiving the information from different sources and as such the petitioner has not been confronted with any such information, therefore, fundamental right in terms of fair trial as referred in Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 is considered to be violated although the legislative intent as envisaged in Section 11 is based upon the *ex-parte* information, therefore, while considering the above background, SHO P.S. Shehzad Town, Islamabad has failed to place any document on record through which it could be ascertained that petitioner is member of proscribed organization in terms of Section 2(q), 11(b) of the ATA, 1997, nor he is involved in any case of Anti-Terrorism in this regard, therefore, *prima-facie* requirement is not visible and as such petitioner has been provided with an alternative remedy to submit a review or to challenge the said order of Federal Government within period of 30 days in appeal, all such exercise is a futile exercise especially when the pre-requisite of Section 11EE has not been fulfilled and the basic order is without jurisdiction, therefore, this Court is well equipped with the extra ordinary powers to deal with the violation of fundamental rights as in this case right to fair trial of petitioner in terms of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973

has not been considered by the respondents authority before placing his name in the 4<sup>th</sup> Schedule of ATA.

12. In view of above, instant writ petition is allowed. The name of petitioner placed in the 4<sup>th</sup> Schedule ATA U/S 11EE is declared to be illegal and petitioner's name stands removed from the said notification with immediate effect, however, this order is subject to a condition that petitioner shall submit undertaking to the Chief Commissioner, ICT and the SHO P.S. Shehzad Town that he will only arrange religious procession on the notified route on the approved date and time after obtaining the required NOC from the competent authority and he will not use any derogatory language or disrespectful words, statements which will affect the personal feelings of the other sects.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Zahid