

IN THE SUPREME COURT OF PAKISTAN
(Suo Motu Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, C.J.
Mr. Justice Khalil-ur-Rehman Ramday
Mr. Justice Tassaduq Hussain Jilani
Mr. Justice Ch. Ijaz Ahmed

SUO MOTU PETITION NO. 11 OF 2005

(Petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan)

(Lost of lives of innocent Children due to Kite flying)

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| On Court notice | : | Mr. Shahid Hamid, Sr. ASC, Mr. M. Ismail Qureshi, Sr. ASC, Mr. Ahmer Bilal Sufi, ASC. Mr. Muhammad Fahim Shehzad. |
| For the Govt. of Punjab | : | Mr. Aftab Iqbal Chaudhry, A.G. (Punjab) Dr. Danishwar Malik, Dy. AG (Punjab). |
| For the Govt. of NWFP | : | Mr. Javed Shankat Malik, ASC. Mr. M.A. Qureshi, AOR. |
| For K.B. Traders | : | Mr. S.M. Masud, ASC. Mr. Mahmood-ul-Islam, AOR. |
| For the WAPDA | : | Mr. Muhammad Akram Arain, Chief Executive (WAPDA) |
| For Faisalabad Kite Flying Association. | : | Mr. Muhammad Afzal Sindhu, ASC. Haji M. Qayyum Mazhar, AOR. |
| Date of hearing | : | 25.10.2005. |

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C.J. – This

petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan [herein after referred to as "the Constitution"] originates from an article appeared in the weekly "Ghazwa" Lahore dated 8th September 2005, sent by one Syed Riaz Ahmed Zaidi son of Nazeeq Ahmed Zaidi, resident of Rahinyar Khan with the request that on having gone through it,

restriction be imposed on kite flying as it is causing loss of billions of rupees of property as well as valuable human being. The article is published under caption "_____"
wherein tragic incidents of deaths of innocent children by a sudden incision on their throat, caused by a kite-string have been reported. These incidents resulted in number of deaths of motorcyclists and pedestrians, when reinforced kite string cut their throats. It may be noted that for the purpose of kite flying, chemical coated twines, mixed up with ground glass, having sharp edges, is prepared. The mixture, which is coated on the thread is commonly known as "sharp Maanjha", which is a secret paste made from eggs, wet flour, or boiled rice, and mixed up finely with ground glass, glue, colours and few other ingredients. The number of reports available on recent indicates that if a flying kite is cut, the children starts running into the streets or on roof-tops, armed with bamboo sticks or stone attached to the "door" other than the twines, with an idea to grab the trailing kite line that is floating downwards to the ground from the sky. This race amongst the children results in causing their deaths, when they fell down from the roof-tops or met an accident with vehicular automobiles. Similarly, some of the children use steel wire attached with the stone, to get at kites that are cut and if such wire drops on overhead high power transmission lines, the power breakdown occurs due to tripping, which causes damage of the electricity installation including domestic electric appliances and deaths due to electrocution of innocent persons.

2. The reports submitted by the Police department reveals that the incidents of death and injuries took place due to kite-flying are not reported and some of the cases had been disposed of by the Police under Section 174 Cr.P.C. without probing into the cases in depth.

34

3. Similarly, despite of registration of cases by the Police, under Punjab Prohibition of Dangerous Kite Flying Activities Ordinance 2001 [herein after referred to as "the Ordinance 2001"] and prior to its promulgation, by initiating proceedings under Section 144 Cr.P.C., the object of avoiding ugly incidents of deaths and injuries to innocent citizens, could not be achieved. As majority of cases registered by the Police had been cancelled for no other reasons but for want of proof to establish accusation against any particular person.

4. It may be noted that before the promulgation of Ordinance 2001, the Administration had been initiating action under Section 144 Cr.P.C. by imposing ban on kite flying activities. The Courts, from time to time, had given number of suggestions to control this menace, as it is evident from the case of M.D. Tahir, Advocate v. Government of Punjab (2001 CLC 1180). Relevant para therefrom is reproduced herein below:-

"The learned Advocate General, Punjab has placed on record measures taken by the respondents in obedience of the direction of the learned Single Judge of this Court, and as directed by us vide order dated 13-2-2001, which are reproduced hereunder:-

(1) "Legal Order under Section 144 Cr.P.C.

District Magistrate Lahore has issued prohibitory orders under Section 144, Cr.P.C. imposing complete ban on manufacture, sale and use of metal wire for kite-flying or any aerial firing, or misuse of loudspeakers, etc, (Copy attached). This order has been passed for ensuring maintenance of public peace and tranquility and for preventing any danger human life or property.

(2) Legal Security Bonds

All owners/managers of those venues/ places where public functions of Basant are being arranged, like hotels, Havelis,

etc have been made to furnish security bonds in sum of Rs.5 lacs each for ensuring good behavior and for adherence to code of conduct. More than 2000 such security bonds have been got executed and in case of violation concerned persons have been warned that in addition to strict action per law against them, these persons will also be made to pay the said amount of penalty for violation of code of conduct.

(3) Operational Special Teams

25 Special Teams/Squads have been constituted for Lahore, which include Magistrate, SHOs, representative of WAPDA and notable citizens of area. These teams are conducting regular raids for the last one week to identify those units which are manufacturing metal wire for use in kite flying. These special teams/squads have also been tasked to conduct raids against those who are using metal wires for kite-flying. More than 600 raids have been conducted by these Teams/squads.

(4) Penal

Strict penal action is being taken against those who are found guilty of use of metal wire for kite flying, or for aerial firing. 68 cases have been registered in Lahore and 78 persons have been arrested for violation of law on this count.

(5) Warnings

Apart from this, general public is being warned also against use of metal wire for kite flying, or any aerial firing during Basant related activities as this causes danger to public life and property. Warning notices are being issued and more than 2000 such

handbills have been distributed in those areas of Lahore, where Basant activities are more intense.

(6) Publicity

Massive publicity is also being done to solicit support of general public in these efforts of administration. D.C, Lahore and Officers of Divisional Administration have been part in two Talk-Shows in this regard which have been telecast on PTV in which also general public was requested to desist from any illegal activities during Basant which endanger lives of other people. Press is also being requested to give positive coverage to these efforts. Recent Press clippings in this regard as attached."

5. It may be noted with regret that after the pronouncement of above judgment on 15th February 2001, the Ordinance 2001 was promulgated on 26th December 2001 but without incorporating any of these conditions therein. A perusal of the Ordinance 2001 reveals that it does not contain preventive mechanism, nature of criminal liability, followed by a penal offence, for causing deaths and injuries, particularly to the innocent citizens including the children, who have sustained losses of life and property for none of their fault. In number of cases deaths had taken place by a sudden incision of throat by a reinforced kite flying string to the motorcyclist and pedestrians.

6. The Chief Secretary, in para-wise comments has admitted that the Government of Punjab was apprised through public complaints, media reports and other sources that kite flying, particularly in Lahore, had assumed alarming proportions and posed a grave danger to human life due to use of metallic wire/nylon by the kite flyers, therefore, in order to protect

37
and safeguard human lives from such dangerous activities, the Government promulgated the Ordinance 2001. But in our opinion, the Ordinance 2001 does not fulfill certain requirements as it has been indicated herein above, and the result is that day by day the incidents of causing huge damage to the public property and life are increasing on account of kite flying activity.

In addition to para-wise comments, submitted by the Chief Secretary, the Advocate General (Punjab) in an addendum has admitted that the Ordinance 2001 suffers from omissions and lacunas. Relevant portion therefrom reads as under:---

".....A bare perusal of the Ordinance denotes that nothing dealing with the material used in the dangerous kite flying has been provided therein. It is queer that the kite flyers who use "tandy" (nylon cord) for flying kites may be nabbed and proceeded against, therefor but the cause thereof i.e. the manufacture, transportation, storage and sale of nylon cord has nowhere been dealt with in the entire Ordinance. Legislation to supply the omission shall go to the root of the cause in curbing the dangerous kite flying effectively and efficiently....."

Above admission of the Government has strengthened to our above conclusion.

7. Mr. Shahid Hamid, learned Sr. ASC, who voluntarily appeared in Court had placed on record a statement indicating year-wise losses sustained by LESCO, due to kite flying activities. The statement for sake of convenience is reproduced herein below:-

| Year | 11 KV Tripping | Revenue loss | 132 KV Tripping | Revenue loss | Net Tripping | Net loss | Equip. Loss | Total loss |
|----------------------|----------------|--------------|-----------------|--------------|--------------|---------------|-------------|---------------|
| 2000 | 82688 | 320,004,844 | 3430 | 254,822,968 | 86118 | 574,887,812 | 680,000 | 575,567,812 |
| 2001 | 87255 | 363,656,787 | 3551 | 284,146,399 | 90806 | 647,803,186 | 7,321,000 | 655,124,186 |
| 2002 | 95211 | 425,159,340 | 4518 | 387,392,649 | 999729 | 812,551,989 | 568,000 | 813,119,989 |
| 2003 | 102677 | 489,066,802 | 5355 | 489,689,561 | 108032 | 978,756,364 | 30,537,170 | 1,009,293,534 |
| 2004 | 115667 | 564,712,022 | 5582 | 523,253,069 | 121249 | 1,087,965,091 | 5,397,000 | 1,093,362,091 |
| 2005 up to September | 124917 | 483,436,325 | 4867 | 456,190,777 | 129784 | 939,627,102 | 12,211,036 | 951,838,138 |

8. Learned counsel under instructions stated that causes of tripping in 11KV and 132 KV transmission lines is 90% by metallic wire, attached with kites. He had also stated that the kite flying causes following effects on electric powers supply system:---

- i) Interruption in supply.
- ii) High voltage develops in the system.
- iii) Flow of heavy current in the lines.
- iv) Weakens the joints.
- v) Reduce life of conductor & transformer.
- vi) Complete damage of equipment.
- vii) Fatal/non-fatal accidents.
- viii) Revenue loss.

He had placed on record photographs, depicting that the kite flyers climbs over the high power electric transmission installations, with an idea to grab trailing kite line, which often proves fatal for their lives either due to their electrocution or by falling down from these electric installations.

Learned counsel further pointed out that the consumers of electricity also sustained losses as "tripping" causes sudden discontinuation of electricity results in blowing up domestic electric appliances, computers, etc. Similarly due to discontinuation of the electricity, many other persons suffer equally, including the patients, being operated upon in hospitals as breakdown of electricity threaten to their lives as well. He emphasize that on one hand kite flying provides enthusiasm to kite flyers but at the same time, it becomes a serious hazard to public peace and tranquility, as number of citizens have lost their lives and have sustained permanent injuries etc., therefore, strong preventive measures to control such menace is called for.

9. Mr. Shahid Hamid, Sr. ASC pointed out that had the Provincial Government been serious in controlling the dangerous activities of kite

307
flying, it should have adhered to the provisions of Sections 141, 142, 143 of the Local Government Ordinance 2001, read with Schedule appended therewith, as this provision of law provides a better mechanism to control effectively dangerous activity of the kite flying. He emphasized that Article 9 of the Constitution enjoins a guarantee of life to the citizens of this country. The State functionaries are legally obliged to ensure the enforcement of such an important fundamental rights of the subjects. To strengthen his arguments he placed reliance on Shehla Zia v. WAPDA (PLD 1994 SC 693) and read out the following para therefrom, wherein the word "life" has been interpreted by this Court:---

"13. According to Oxford dictionary, 'life' means state of all functional activity and continual change peculiar to organized matter and specially to the portion of it constituting an animal or plant before death and animate existence.

In Black's law Dictionary, 'life' means "that state of animals, humans and plants or of an organized being, in which its natural functions and motions are performed, or in which its organs are capable of performing their functions. The interval between birth and death. The sum of the force by which death is resisted..... 'life' protected by the Federal Constitution includes all personal rights and their enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home and bring up children, freedom of worship, conscience, contract, occupation, speech, assembly and press."

The Constitutional Law in America provides an extensive and wide meaning to the word "life" which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachment on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be

40
encroaching upon the personal rights of a citizen to enjoy the life according to law. In the present case this is the complaint the petitioners have made. In our view the word 'life' constitutionally is so wide that the danger and encroachment complained of would impinge fundamental right of a citizen. In this view of the matter the petitioner is maintainable."

He also stated that due to the kite flying activities, citizens are being denied the fundamental right of the protection of the property envisaged under Article 24 of the Constitution. To elaborate his arguments, he stated that electric installations owned by LESCO belongs to the public in large, therefore, any loss sustained by it shall be incidentally the loss of the public and similarly blowing up of domestic electric appliances, computer etc. due to disconnection of the electricity on account of tripping causes direct denial of protection to their property, therefore, substantial questions involving fundamental rights of the citizens, calls for an authoritative pronouncement from this Court to control the kite flying activities in an effective manner.

10. *Mr. Muhammad Ismail Qureshi, ASC, who also appeared on Court notice reinforced the arguments of petitioners' counsel and put forward his view point to canvas that as the kite flying activities are hazard to lives and the property of the citizens, therefore, the same deserves to be banned completely.*

11. *Mr. Ahmer Bilal Sufi, ASC who had also appeared voluntarily, pointed out number of defects in the Ordinance 2001 and stated that it is required to be amended drastically. He suggested that the Government should amend it in such a manner so it may acquire full control to prevent the kite flying activities, particularly on the roof-tops and thereby populated areas and if at all it is indispensable to allow kite flying activities being so called part of the culture of Lahore, then the measures should be*

41

adopted so the kite flying may take place out side the urban area as in the neighboring countries, such festivals of kite flying take place for limited purpose in the open places. He quoted the example of Jodhpur and Ahmedabad. It was also contended by him that the Government may examine the provisions for the purpose of granting compensation to the victims, after recovering the same from the Kite Flying Association, who are responsible to manage the kite flying activities.

12. Mr. S.M. Masood, learned counsel who appeared on behalf of K.B. Traders, stated that as far as thread manufacturers are concerned, they cannot be held responsible for causing damage to the lives and properties of the citizens, due to kite flying, because they being the industrialists supply thread for number of other purposes. He explained that actually trouble arises when the kites are flied with the metallic wire, ordinarily taken out from clutch-wire of the motorcycle, and the thread coated with "sharp Maanjha", therefore, no restriction can be imposed upon the weavers of thread.

13. Mr. Muhammad Afzal Sindhu, ASC appeared on behalf of Kite Flying Association, Faisalabad. His argument was that in Faisalabad no untoward incident of causing death of innocent citizen by a sudden incision on throat of any person with the kite flying string had taken place, therefore no action is called for against the association.

14. At this stage, a young boy namely Muhammad Fahim Shahzad appeared in Court and placed on record his written statement mentioning therein that when he was going back after taking B.A. examination, suddenly he got incision on his throat, with the kite flying string. Though he is alive but without speaking power, as his vocal cords have become un-functional, therefore, not only his educational career has spoiled but he had also no social life and now he has also developed breathing problem.

42

On his behalf Mr. Shahid Hamid, learned ASC had placed on record certain documents compiled by his counsel namely Mr. Muhammad Akram Sheikh, Sr. ASC, who is on adjournment as he is out of country. These documents are sufficient to understand the miseries being suffered by him due to kite flying activity.

15. It is important to note that in pursuance of order dated 7th October 2005, the Government of Punjab through Inspector General of Police was directed to issue instructions to all concerned Superintendent of Police to register the names of the persons, dealing with the trade of thread as well as manufacturing of kites. In pursuance of this order, the Inspector General of Police (Punjab) had furnished the details of the dealers, involved in the trade of the thread and in kite manufacturing. Their names have been registered with the local police, except few of them as directions have already been issued to the DPOs, to ensure their registration as well. As a result of this exercise, the Police had got complete data of the persons, engaged in the preparation of kite flying strings with "Maanjha" and manufacturers of kites. As far as wholesale dealers are concerned, they are few in numbers whereas the number of retail seller retail of kite flying strings and kites is on the high side. Thus, now it is not difficult for police to initiate action against such persons, who are involved in the business of manufacturers of kite flying strings, "Maanjha" and kites because on account of their such activity, the general public throughout the country has been exposed to danger to their lives and property, as it has been noted herein above in detail. It is the duty of the Provincial Government to ensure the application of Articles 9 and 24 of the Constitution, which guaranteed the fundamental rights of life, liberty and protection to property of the citizens.

L₁ 25

16. Material so brought on record, abundantly makes it clear that the kite flying activity, *prima facie*, is no more the activity of enthusiasm but a ~~serious~~ threat to the lives of innocent citizens. The laws so far applicable in the Province of Punjab, seems to be insufficient to achieve the object, as it has been discussed herein above. It may be noted that the provisions of Punjab Local Government Ordinance, 2001 i.e. Ss. 141 and 142 etc. even if adhered to/enforced fully, even then there is need of promulgating a stringent law, to nab those persons, who are directly or indirectly responsible for causing danger to the lives of innocent citizens, as well as the property owned by the individual and the company, responsible for supply of electricity.

17. Learned Advocate General stated that Local Governments Election had taken place recently and elected representatives i.e. Nazims and Naib Nazims so far had not taken over completely charge of their offices, therefore, if some time is given, then Inspectors shall be appointed in terms of Section 142 of the Local Government Ordinance 2001, to prevent the offences of manufacturing, keeping, selling kite flying string, or any material which can be used in preparation of kite flying string and kites, causing danger to human life or disruption in electric supply, in accordance with item 34, Part-II, 4th Schedule, under Sections 141, 142, 143 and 144 of the Local Government Ordinance 2001.

18. We are ready to accept his request but on having taken the cognizance of the matter, which involves denial of fundamental rights of the citizens, enshrined in Article 9 and 24 of the Constitution, it would not be fair to allow the kite flying activity, at the cost of life of human being and property, owned by the Government institution or private individual. As such, keeping in view overall facts and circumstances of the case, which

44

have been discussed herein above in detail, case is adjourned to 8th

December 2005 with the following directions:---

- i) Pending decision of the petition, the manufacturers/ sellers of kites, kite flying strings of all kinds, including the "sharp Maanjha", metallic wire and nylon cord, are restrained to indulge into this trade, either manufacturing or selling in wholesale or in retail, on any business or open place, till the next date of hearing. Similarly, no one, whosoever he may be, is allowed to fly kites with "sharp Maanjha", metallic wire, nylon cord or any sort of string, during the period of operation of this order.
- ii) Inspector General of Police (Punjab) and other Provinces with the assistance of Nazim/ Naib Nazim, DCOs, Councilors of the District, Towns, Tehsils as well as Union Councils, shall ensure the compliance of this order in letter and spirit. However, if any one is found, violating the order, he shall be served with a notice by the concerned SHO of the Police Station, to appear before this Court on the next date of hearing for facing the proceedings of contempt of Court and on having taken surety bonds from each of them in the sum of Rs.5,000/-, he or they shall be released. Photo-copy of the ID Card of the contemner be also retained for the purpose of identification at the time of hearing of the case.
- iii) The alleged contemner, if any, shall be dealt with in accordance with the provisions of law of Contempt of Court and if found guilty, shall be punished adequately.
- iv) The Inspector General of Police (Punjab) and other Provinces shall transmit a report qua the incidents of violations of the order of the Court, to the Registrar of this Court immediately, who shall issue notices to the violators, forthwith, to appear and explain as to why action for contempt of Court may not be initiated

against them. The cases of all such persons shall be fixed on the next date of hearing.

- v) If, in the meantime, any untoward incident takes place within the jurisdiction of a particular Police Station, the concerned SHO shall register a case against the persons, including the manufacturers and sellers of the kites and kite flying strings, and after investigation, cases shall be forwarded against them before the Court of law, notwithstanding the fact that they may be facing the proceedings of violating the order of this Court.
- vi) The Chief Secretary of the Provincial Governments shall ensure necessary amendments, if needed, in the relevant laws, in the meantime, in order to make the existing laws viable for the purpose of controlling kite flying activities, within the urban areas.
- vii) The owners/occupants of the house, shops, hospitals, buildings, etc. shall not allow kite-flying activity on their roof-tops, failing which, they would also be liable for action of contempt of Court and the concerned SHO shall submit a report against them, as well, in the manner specified herein above.
- viii) The Kite Flying Associations and the Provincial Government shall examine ways and means, jointly, to prevent the citizens from loss of life and property, in future.
- ix) The Provincial Governments shall give wide publication to this order through press and electronic media, so every one may know that kite flying activity has been banned by this Court.
- x) The Chairman of Lahore Electric Supply Company shall submit a report indicating that how many trippings took place during the period of operation of this order and the quantum of loss, if sustained by it.
- xi) The Secretary, Health Department, Government of Punjab is directed to examine, in the meantime, as to

whether officially arrangements can be made for the treatment of Muhammad Fahim Shahzad, within or out side Pakistan. A report in this behalf shall be submitted by him on the next date of hearing.

19. Notice in the meantime, be issued through newspapers at the cost of Provincial Governments, to the manufacturers/sellers of kites, kite flying strings of all kinds, including the "sharp Maanjha", metallic wire and nylon cord, to appear, if desired/advised, on the next date of hearing in support of their respective pleas. Notice to Nazims, Naib Nazims of the Districts, DCOs and Councilors be also issued through publication at the cost of Provincial Governments.

20. Attorney General for Pakistan as well as Advocates General of the Provinces be also requested to appear and assist the Court.

Herein above are the reasons of our short order of even date.

Lahore,
25.10.2005.
Irshad /s/

APPROVED FOR REPORTING.