

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial, HCJ  
Mr. Justice Ijaz ul Ahsan  
Mr. Justice Munib Akhtar  
Mr. Justice Yahya Afridi  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

**CONSTITUTION PETITION NO.19 OF 2022**

(Under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 for enforcement of fundamental rights contained in the Constitution for the protection of the citizen of Pakistan)

&

**CIVIL MISC. APPLICATION NO. 3447 OF 2022**

(Application filed by Attorney General for Pakistan)

Islamabad High Court Bar Association  
through its President Muhammad  
Shoaib Shaheen, Islamabad

... **Petitioner(s)**

**Versus**

Federation of Pakistan through  
Secretary Ministry of Interior, Islamabad  
and others

... **Respondent(s)**

For the Petitioner : Mr. M. Shoaib Shaheen, ASC  
a/w Ch. Ishtiaq Ahmed Khan, ASC  
Mr. Niaz ullah Khan Niazi, ASC  
Syed Rifaqat Hussain Shah, AOR

On Court's call : Mr. Ashtar Ausaf Ali, A.G.P.  
Ch. Aamir Rehman, Addl. A.G.P.  
Assisted by:  
Mr. Munawar Iqbal Duggal, ASC  
Barrister M. Usama Rauf, Adv.

Mr. Jehangir Jadoon, A.G, ICT

Barrister Qasim Ali Chohan,  
Addl. A.G., Punjab

Mr. Ayaz Khan Swati,  
Addl. A.G., Balochistan

Mr. Salman Talib-ud-Din,  
A.G., Sindh  
(V.L Karachi)  
Mr. Fauzi Zafar, Addl. A.G., Sindh

Mr. Shumail Butt, A.G., KP.  
Mr. Atif Ali Khan, Addl. A.G., KP.  
(V.L Peshawar)

Mr. Yousaf Naseem Khokhar,

For PTI : Dr. Babar Awan, Sr. ASC  
Mr. Fasil Fareed, ASC  
a/w Mr. M. Ali Bokhari, ASC

Date of Hearing : 26.05.2022

### **ORDER**

**UMAR ATA BANDIAL, CJ.** In a petition filed by the Islamabad High Court Bar Association under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**"), it was complained that in anticipation of a protest march into Islamabad by the workers of a political party on 25.05.2022, the Federal Government had blocked highways to and roads within the Capital to prevent entry and movement of the protestors. As a result the general public was prevented from conducting their daily lives contrary to the guarantees under Article 9 and Article 15 of the Constitution. As explained later, after being conveyed the assurances by the top party leadership that a peaceful

assembly will take place at a specific venue in Islamabad, a learned three Member Bench directed all concerned Executive authorities to prepare the venue including providing security for the holding of the rally. Likewise, all protesting political workers were directed to disengage and remain peaceful. These directions were issued by the order of the learned Bench passed at about 6:00 pm on 25.05.2022.

2. Later, an application being CMA No. 3447 of 2022 was filed at about 10:30 pm on 25.05.2022 by the learned Attorney General for Pakistan ("**AGP**"). It alleged that the Pakistan Tehreek-e-Insaf ("**PTI**") leadership, in particular its Chairman Mr. Imran Khan, had contrary to his assurances given to the Court directed his party members and supporters to march into Islamabad and reach D-Chowk located in the sensitive Red Zone area of the Capital. He has read from the order of this Court passed on 25.05.2022. The Court had directed Dr. Babar Awan, Sr. ASC and Mr. Faisal Fareed, ASC appearing for the PTI leadership to seek assurance from their client that PTI workers/supporters would remain peaceful and follow the guidelines issued by the Court from time to time. That they will neither obstruct road traffic or cause damage to private/public property nor take the law into their own hands. In this respect the two learned counsel on instructions from the top leadership of PTI gave a categorical

assurance that the party rally would neither block the Sirinagar Highway nor otherwise cause inconvenience to the public and citizens at large and that their rallies shall be conducted in a peaceful and lawful manner without causing any damage to public or private property.

3. In view of these commitments, the Court by its aforesaid order passed on 25.05.2022 directed the Chief Commissioner, Islamabad Capital Territory ("**ICT**") to provide the ground located in the area between Sectors H-9/G-9 of Islamabad for the political rally; and also directed the Inspector General of Police ("**IGP**"), ICT to forthwith take measures including making security arrangements to prepare the venue for holding the PTI rally. Furthermore, the Court directed that the lawyers and other persons reportedly placed under arrest in raids conducted without any complaint or FIR being recorded against them shall be released from custody forthwith. The AGP undertook that houses, offices and private premises shall neither be raided in an attempt to arrest nor shall political workers or supporters of PTI or any other political party be arrested unless an FIR was lodged against them or the commission of any heinous or cognizable offence by them was suspected. Accordingly, a direction in the said terms was issued by the Court. Finally, the Court recorded its expectation that the top leadership of all concerned political

parties shall direct their workers and supporters to remain calm, disengage and not to create law and order situation under any circumstances. Equally, it was noted that the top functionaries of the Government including the Interior Ministry shall ensure that excessive or disproportionate use of force against the political workers is discontinued immediately.

4. In the foregoing background the AGP argued that having agreed to hold the PTI rally at the ground in the H-9/ G-9 area of Islamabad as recorded by the order of the Court, Mr. Imran Khan shortly thereafter instructed PTI supporters to reach D-Chowk in the Red Zone of Islamabad. To establish this retraction a video recording of Mr. Imran Khan's statement made after the passing of the above said order was played on the multimedia screen before the Court. He contended that in the above circumstances, Mr. Imran Khan appears to have invited his supporters to dishonor the assurance given on his behalf to the Court. As a result, private and public properties were damaged and destroyed. Some trees in the greenbelt of Blue Area of Islamabad were put on fire. 31 Police Officers were injured by the stones pelted by the crowd and Article 245 of the Constitution had to be invoked in the middle of the night by calling the armed forces in aid of civil power. The learned AGP accordingly

requested the Court to take action against Mr. Imran Khan for breach of his assurances given to the Court.

5. Finally, the AGP informed that Mr. Imran Khan had issued a statement this morning at a location on Jinnah Avenue (leading to D-Chowk) that after witnessing the teargas shelling by the law enforcement agencies he will not proceed with the sit-in at D-Chowk. He gave six days' time to the Government to dissolve the assemblies and announce a date for elections.

6. The Court views the foregoing events with concern. It is apparent that the assurances conveyed to the Court by the learned counsel for the top leadership of the PTI may have been dishonored by the workers/supporters/sympathizers of the party by proceeding to the D-Chowk in the Red Zone area and by allegedly committing acts of arson and destruction of public and private properties on the way. However, we note that in the early morning today Mr. Imran Khan reached Jinnah Avenue leading to D-Chowk and announced the postponement of his sit-in at Islamabad for six days. As a result, further damage to property or injury to human life has been averted.

7. Nevertheless, there remains the lurking question whether the responsibility for the events of yesterday evening comprising reckless acts of mob anger can be blamed upon

the senior leadership of the PTI. So far there is no evidence or allegation that such acts were committed on the instigation of any party or happened randomly. At its most elementary level the PTI leader appears to have assured the holding of a political rally at the G-9/H-9 ground and therefore not to assemble and sit in another venue including at D-Chowk in G-5 Islamabad. However, the AGP claims that the PTI workers and supporters moved forward to the D-Chowk area in response to the call made by their leader. Notwithstanding the said request by the AGP, we exercise restraint for the time being for a number of reasons. Firstly, Mr. Imran Khan has called off the rally/public meeting. That gives a recess to the charged mob witnessed last night. Secondly, prudence advises that time be given for sanity to prevail among the stakeholders. In any event, facts and materials need to be collected to establish the sequence of events, the identity of the perpetrators and of the instigators, if any. At this stage therefore it is directed that the IGP ICT, the Chief Commissioner ICT, the Secretary Ministry of Interior, the Director General Intelligence Bureau, the Director General ISI shall file reports answering, *inter alia*, the following questions:

- a) At what time did Mr. Imran Khan make the announcement for party workers to reach D-Chowk?
- b) When, where and how did the crowd cross the barricade to enter a hitherto closed area?

- c) Was the crowd entering the Red Zone organized or supervised or did it move randomly?
- d) Were there any acts of provocation or breach of assurance by the Government?
- e) Was any action or treatment meted out by the ICT police against the protesters disproportionate to the actual or perceived wrong committed by the protesters?
- f) How many protesters managed to enter the Red Zone? Which security arrangements, if any, were relaxed by the Executive authorities? Whether any security barrier cordons were broken or breached by protestors? Did any protestor/party worker reach the G-9/ H-9 ground?
- g) How many civilians were injured/killed/hospitalized/arrested?

The said reports shall be filed within one week for perusal in chambers by the learned members of this larger Bench.

8. There is need for verification of, *inter alia*, factual aspects of the events that occurred in order for the Court to evaluate and decide whether action for violation of assurances/undertaking given to the Court and recorded in our order dated 25.05.2022 ought to be initiated and against whom. It may be observed that the disregard of assurances/undertakings given to the Court involves separate proceedings from the present one. Therefore, the prayer made by the learned AGP in these proceedings is misconceived. Accordingly, CMA No.3447 of 2022 is dismissed. For independent proceedings to be maintained, relevant and credible material must be presented to the Court for it to



assess whether there are valid grounds to justify appropriate action against the offending persons, if any.

9. Be that as it may, our order dated 25.05.2022 issues directions to the Government authorities to protect the constitutional rights of the people of Pakistan as guaranteed in Article 15, which secures the right of free movement, and Article 16, which protects their right of freedom of assembly. These constitutional provisions are to be read in conjunction with the most crucial right guaranteed by the Constitution, namely, the right to life. The violation of the right to life of citizens under Article 9 of the Constitution caused by the arrest of hundreds of political workers across the country without recording FIRs or serving detention orders were accordingly quashed by our aforesaid order as a protective measure under the Constitution. However, it must be understood that each of the foregoing fundamental right is subject to corresponding qualifications. The provisions of Articles 9, 15 and 16 of the Constitution may be read to appreciate the point. The right to life and liberty is interpreted widely and the same cannot be interfered except as authorized by law. Likewise, the freedom of movement can be subjected to reasonable restrictions imposed by law in the public interest. The freedom of assembly may be regulated by similar restrictions applied in the interest of public order. The

foregoing limitations on the rights granted by the Constitution empower the State to take only such reasonable, proportionate and lawful action that is necessary in aid of public interest and public order so that public place, public life and property are not disturbed, disrupted or destroyed.

10. By acting upon assurances given on behalf of the top leadership of PTI and issuing directions to the Government, our order dated 25.05.2022 created a balance between the mutual rights and obligations of the protesting people, the ordinary public and the duties of the State. This balance was recorded in good faith by the Court whilst trusting the representations made on behalf of the two opposing parties before it. We are disappointed to note that the *bona fide* effort made by the Court was disrespected. Although it was meant to create harmony between the two opposing sides for the sake of protecting public interest and the constitutional rights of the people, such order was passed by trusting the representations made and assurances given to the Court. The judicial trust reposed by the Court on the parties before it confers moral legitimacy and authority upon their actions. The resulting high moral ground lends credibility to the entitlement and to the propriety of actions taken by such parties. In the present case, to say the least, the moral high ground held by the parties has diminished

because public rights, interests, and property of the disinterested public have been breached and damaged badly. We expect that the high functionaries of the Executive throughout the country and the top leadership of the PTI and other political parties shall abide and settle a fair code of securing free, fair, and peaceful political activity in the country leading to the holding of the national election. It may be reiterated that whilst right of peaceful protest is a constitutional right it must be exercised subject to permission by the State. Such permission must be granted unless there are reasonable restriction imposed on valid grounds in terms of Articles 15 and 16 of the Constitution. In other words, the right of protest cannot be denied without lawful, reasonable and proportionate grounds nor can such Executive authority hamper public life or injure public or private property. [Ref: **Suo Motu Case No.7 of 2017** (PLD 2019 SC 318)]. Any violation of the balance envisaged in this behalf by the Constitution and the law is cognizable by the competent Courts for enforcement.

11. In the present case, the PTI leadership and supporters have presently withdrawn from indulging in any political protest and rallies in Islamabad and the roads and pathways are open allowing for free movement of the public within and to the city. We accordingly consider that the

purpose of this petition filed by the Islamabad High Court Bar Association has been served and the same has borne fruit. It has therefore become infructuous. Accordingly, we dispose of the same as having become infructuous.

Sd/-  
**Chief Justice**

Sd/-  
**Judge**

Sd/-  
**Judge**

I have appended my separate note.

Sd/-  
**Judge**

Sd/-  
**Judge**

Islamabad  
26.05.2022  
*Irshad Hussain /\**

**NOT APPROVED FOR REPORTING**

**Yahya Afridi, J.-** I have had the privilege of reading the order authored by his lordship, the Hon'ble Chief Justice of Pakistan, and agree with the conclusion that the Constitution Petition No.19 of 2022 filed by the Islamabad High Court Bar Association has become infructuous. I also agree with the order dismissing the Civil Miscellaneous Application No. 3447/2022 filed by the learned Attorney-General for Pakistan as being misconceived.

2. Respectfully, I would like to add some observations on the maintainability of the very prayer made by the learned Attorney-General for Pakistan in his miscellaneous application. The learned Attorney-General for Pakistan has, in the application, after alleging violation of the court-order dated 25.05.2022 by the PTI leadership, made the following prayer:

[T]his Court may pass prohibitory and regulatory orders so as to allow the law enforcement agencies to take action against the miscreants including but not limited to causing arrest of the miscreants.

Indeed, it is a surprising prayer. The learned Attorney-General for Pakistan, who is the principal law officer of the Federal Government, has asked this Court to pass "prohibitory and regulatory orders" to maintain the law and order situation in Pakistan. The prayer made is against the very principle of trichotomy of powers enshrined in our Constitution, which has assigned separate roles to the three organs of the State: the legislature, the executive and the judiciary. To maintain law and order in the country is the domain and mandate of the executive. Thus, the very prayer is contrary to the constitutional mandate and is, therefore, not legally entertainable.

3. However, with profound respect, I disagree that there is no credible material before this Court for initiating independent contempt proceedings against Mr. Imran Khan, who allegedly

disobeyed<sup>1</sup> the court-order dated 25.05.2022. The video-recording of Mr. Imran Khan's statement was played on multimedia screen in open court during the court proceedings. The said statement is reproduced hereunder:

سارے جدھر بھی پاکستانی یہ دیکھ رہے ہیں ۔  
خوشخبری یہ ہے کہ سپریم کورٹ نے فیصلہ کر دیا ہے  
کہ اب کسی قسم کی رکاوٹ نہیں ہو گی کوئی پکڑ دھکڑ  
نہیں ہو گی اس لیے میں سارے پاکستانیوں کو آج کہہ  
رہا ہوں کہ آج شام اپنے شہروں میں بھی نکلیں۔  
اور اسلام آباد اور پنڈی میں پوری طرح کوشش کریں ڈی  
چوک پہنچنے کی آج شام کو۔ کیونکہ میں انشاء اللہ  
گھنٹے ڈیڑھ تک وہاں پہنچ جاؤں گا۔

The above statement of Mr. Imran Khan, coupled with his conduct that followed thereafter in proceeding beyond the venue decided in the order dated 25.05.2022 for the political gathering, is in my opinion, sufficient to *prima facie* show that Mr. Imran Khan disobeyed the order of this Court dated 25.05.2022.

4. With profound respect, instead of calling for reports from the named officials of the State Agencies/Departments, as directed by my learned brother, I am of the opinion that there is sufficient material before this Court to proceed against Mr. Imran Khan for the alleged disobedience of the court order dated 25.05.2022 passed in Constitution Petition No.19, which warrants the issuance of notice by this Court to Mr. Imran Khan to explain why contempt proceedings should not be initiated against him. I order accordingly.

Sd/-  
Judge

<sup>1</sup> Article 204 (2) (a) of the Constitution of the Islamic Republic of Pakistan, 1973.