

SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Umar Ata Bandial
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Sajjad Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

S.M.C. 01/ 2020

(SUO MOTO ACTION REGARDING COMBATING THE PANDEMIC OF CORONA VIRUS
(COVID -19))

IN ATTENDANCE:

- For the Federation : Mr. Khalid Javed Khan,
Attorney General for Pakistan
Mr. Sohail Mehmood, DAG
Dr. Tanveer Qureshi,
Secretary M/o National Health
Asif Suhail, Director (Lit)
G.M. Jakhrani, Dy. Director (Lit)
(All from M/o National Health)
Mirza Mahsood, J.S. M/o Interior
Shams-ur-Rasool SO Interior.
- For ICT : Mr. Niaz Ullah Khan Niazi,
A.G., Islamabad
Hamza Shafqat, D.C., (I.C.T.A.)
Azhar Hussain Shah, DSP Legal.
- For Govt. of Punjab : Mr. Shan Gul, A.G., Punjab
Javed Yaqoob, Addl.AG, Punjab
Cap (R) M. Usman, Secy. Primary &
Secondary Health Deptt. Punjab
Mr. Amar Jan, Secretary Labour &
HR Department Lahore.
Mr. Alamgir Ahmed, Secretary Zakat.
M. Nabeel Ahmed Awan,
Secy. Specialized, Health Care &
Medical Education Deptt
(Via Video link from Lahore Branch)
Ch. Faisal Fareed,
Addl.A.G. Punjab *(In Islamabad)*
- For Govt. of Sindh : Mr. Salman Talibudin, A.G, Sindh
Zahid Abbasi, Secy. Health
Muhammad Usman Chachar,
Addl. Chief Secy-Home
Dr. Saeed Ahmed Qureshi,
(Focal Person to Chief Secy. Sindh)
Syed Salman Shah, DG, PDMA
Qazi Shahid Pervez, SMBR
Iftikhar Shalwani, Commissioner Khi

Ahmad Ali Siddiqui, DC East.
(All via Video link from Karachi Branch)

Muhammad Kassim Mirjat AOR
(At Islamabad)

For Govt. of KP : Mr. Shumail Butt, A.G. KP
Syed Imtaiz Hussain Shah,
Secy. Health, KP
Mr. Kamran Rehman,
Secretary Labour.
Mr. Amir Latif, Secy. Industries.
Dr. Muhammad Bilal, Secy. WWB.
Mr. Jajwali Said, Dir. Finance WWB.
Haji Qudrat, AD Legal Labour. KP
M. Abid Majeed,
Secy. Relief Rehabilitation, KP
Mian Shakeel Ahmed,
Secy. Local Govt. KP
Rooh-ul-Amin, Addl. Registrar, PHC
Amir Sultan Tareen
P&D Deptt- EHSAAS, Programme
Idrees Marwat Secretary Zakat.
(All via Video link from Peshawar Branch)

For Govt. of Balochistan : Mr. Arbab Muhammad Tahir,
A.G, Balochistan
Amir Hamza Mengal, DPG Balochistan
Capt.(R) Zafar Zaheer Abbasi,
Spl. Secretary Health.
(Via Video link from Quetta Branch)
Mr. Ayaz Khan Swati, Addl.A.G.
Mr. M. Fareed Dogar,
AAG Balochistan.
(In Islamabad)

For Govt. of GB : Mr. Muhammad Iqbal, AG, G.B.

Syed Iqbal Hashmi, ASC for PMA.

Mr. Samuel Payara
Chairman, Implementation of Minority
Rights Forum
(Via Video link from Lahore Branch)

Ch. Haseeb Muhammad, President IHCBA
Mr. Saeed Khursheed Ahmed, ASC

Date of Hearing : 04.05.2020.

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ORDER

Gulzar Ahmed, CJ: At the outset, we express our thanks to Mufti Muhammad Taqi Usmani for giving his valuable opinion in the matter of Zakat as per the order of this Court dated 20.04.2020. Such opinion of the learned Scholar has been read by us and we have found substantial material in it to provide guidance to this Court in dealing with the subject. Further an opinion has also been received from the Council of Islamic Ideology signed by one Mr. Inamullah, Director General (Research) forwarded by Chairman vide his letter dated 30.04.2020. Such opinion has also been examined by us and found it to be helpful in considering the issue which is being argued before us. Both the opinions are kept on the record. We express our great appreciation for the two opinions.

2. Further, reports have been filed by the NDMA, Senate Standing Committee on Interior, SRAC, Cantonment Boards, ICT, Pakistan Bait-ul-Mal, Provinces of Punjab, Sindh, Balochistan and KP. The learned Advocate General for Gilgit-Baltistan states that he has filed the report only today in Court. We have heard the arguments of the learned Attorney General for Pakistan and also the learned Acting Advocate General Punjab, Advocate General Sindh, Advocate General KP and Advocate General Balochistan so also the Advocate Generals of ICT and Gilgit-Baltistan. We have also heard the other officials appearing before us.

3. The Federal Secretary (Health) at the outset has pointed out that the Haji Camp Quarantine Centre has been closed down and it has been shifted to one Hostel City, where there are 48 rooms for accommodating the passengers who are to be kept in quarantine and facility in this Hostel City for quarantine is altogether free. He admits that Haji Camp was not a proper place where quarantine centre could have been setup for that it lacked all facilities which are required for a

quarantine centre. He states that Haji Camp Quarantine Centre was established by the NDMA. Let the head of the NDMA explain as to why the Haji Camp was declared a quarantine centre without even looking at it whether it can be used as quarantine centre or not. Any amount spent on making it the quarantine centre be also disclosed and accounted for.

4. We have also heard the matter recording national policy on the Corona Virus Covid-19. We are informed that in a policy decision dated 14.04.2020 stakeholders of all the federating Provinces were present along with the Prime Minister and other relevant officials and decision on that day was taken and such decision is being implemented by all the Governments *i.e.* Federal Government and the Provincial Governments so also the Government of Gilgit-Baltistan. It is informed by the learned Attorney General that the policy decision of 14.04.2020 was not broad enough, therefore, another meeting is taking place in a short while wherein the issues will be addressed more adequately.

5. While hearing the case, the learned Attorney General so also the learned Advocate General of the Provinces were asked as to the competency of the Provinces to affect taxation activity of the Federal Government in terms of Federal Legislative List provided in the Constitution or can such activities could at all be stopped by the Provinces. The response given by the learned Attorney General was that the Provinces cannot encroach upon the taxation activities of the Federal Government. Learned Acting Advocate General Punjab acceded to the statement of the learned Attorney General. Learned Advocate General Sindh, however, referred to the Sindh Epidemic Diseases Act, 2014 but in principle agreed that such Act of the Province cannot override the provisions of the Constitution. Same is the response from the Advocate Generals of the other Provinces.

6. Where taxing activities from which Federal Taxes are generated have been stopped by the Provinces, in our view such matter

requires consideration of this Court and we expect the learned Attorney General so also the Advocate Generals of the Provinces and ICT and Gilgit-Baltistan to be ready to argue on this point on the next date of hearing, as we intend to pass order on this very legal question.

7. We have noted also that business activities all over the country on account of lockdown have been stopped. But pursuant to the policy decision dated 14.04.2020 some businesses are being allowed to open up. We have gone through the policy decision dated 14.04.2020 and find that it does not contain much of the policy rather identify some subjects on which industries have been allowed to be open; that beside making reference to the SOPs nothing more has been stated. In our view, this is not a transparent manner in which a policy is made. We have found from the report submitted by the Province of Sindh that they are allowing opening of business activities of industries and shops on making of application by the business owner. We note that such a mannerism of allowing to do business is altogether contrary to the mandatory provisions of the Constitution i.e. fundamental rights and also against the very principle of transparency and thus needs to be revisited and re-examined and in this regard a comprehensive policy be drawn and announced instead of asking for the people to make applications to allow their businesses to open. That policy the government will be required to implement. We expect such policy decision will be taken with full consensus of the Provinces at the national level and applied to the whole country.

8. It has also been noted that Zakat funds and funds of Bait-ul-Mal are not being properly utilized. The Auditor General has submitted his report by way of CMA No. 2848 of 2020 in which he has found lot of irregularities in the funds of Zakat and Bait-ul-Mal. Let copy of the Auditor General's report be supplied to all the Advocate Generals of the Provinces and ICT, who shall seek instruction and file reply to it. What

further is to be done regarding the Auditor General's report that is of referring the matter to FIA or NAB, the same will be considered on the next date of hearing.

9. With regard to the Province of KP, the Court had asked the learned Advocate General so also the Provincial Secretary (Health) about the incident that took place at Dubgari Garden, Peshawar where they have large number of clinics of Doctors and Consultants. It was stated that Clinics in that area are not allowed to function and Police officials are maltreating the doctors and consultants and forcefully trying to close the Clinics. Learned Advocate General KP states that such incident is not in his knowledge and similar is the reply of the Provincial Secretary (Health). We are not satisfied with such replies and direct the Provincial Secretary (Health) to visit the Dubgari Garden and also the doctors' and Consultants' Clinics and enquire from them as to ill treatment given to them by the officials including the police. After such visit is made by the Secretary (Health), he shall submit a report to this Court at the same time shall take action against all relevant officials who are found responsible in maltreatment of the doctors. In the meanwhile, the Clinics as per the SOPs shall be allowed to remain open and no obstruction in this regard shall be caused.

10. The learned Advocate General Balochistan has stated that although the Pandemic of Corona Virus is also present in the Province of Balochistan but in not in numbers which may cause disturbance to the Government of Balochistan. He further states that all required facilities are being received for treatment of the Corona Virus patients and PPEs are provided to doctors and paramedics and there is no complaint regarding this aspect of the matter from the hospitals.

11. A complaint has also been made that Sanitary Staff are not being provided PPEs. All the Advocate Generals so also the learned Attorney General states that the requisite PPEs for the Sanitary Staff

have been provided and if more are required the same will also be delivered to ensure that the health of the Sanitary Staff is not compromised. Learned counsel for the Pakistan Medical Association has also been heard.

12. The President of the Islamabad High Court Bar Association as well as Islamabad District Bar Association have been heard. They state that so far the medical aspect of the matter is concerned, same has appropriately been provided by the ICT Administration but as they have some more grievance, they would like to see the Law Minister for the redressal of the same. Learned Attorney General has been asked to facilitate the meeting of the Presidents of the Bars with the Law Minister and such may be done as early as possible.

13. The matter is adjourned to a date **after two weeks**. In the meanwhile, we expect that all the government stakeholders, Federal Government and Provincial Governments, shall sit together and frame a uniform national policy in one week regarding all aspect of the matter and shall ensure that such uniform policy is enforced all over the Pakistan. A report in this respect shall also be made available to the Court before the next date of hearing.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

JUDGE

Bench-I
ISLAMABAD
04.05.2020
*Irshad Hussian/**