

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI  
(CONSTITUTIONAL JURISDICTION)

Constitution Petition No. 7097 of 2016

Presented on 26-12-11

Additional Registrar (Writ)

1. Karamat Ali,  
Son of (Late) Amanat Ali,  
Muslim, Adult,  
Resident/office at 143-A, Sector X-5,  
Gulshan-e-Maymar,  
Karachi-75340
2. Nazim Fida Hussain Haji  
Son of Fida Hussain Haji,  
Muslim, Adult,  
Resident of House No. A-21/2-A,  
KDA Scheme 1A Extension,  
Stadium Road,  
Karachi
3. Aquila Ismail,  
Wife of Muhammad Masood,  
Muslim, Adult,  
Resident/Office at  
OPP-RTI, St-4, Sector 5/A,  
Qasba Colony,  
Manghopir Road, Karachi-75800
4. Shehzad Roy  
Son of Kabiruddin Roy,  
Through his lawfully appointed Attorney,  
Muslim, Adult,  
Resident of House No. 79/2,  
Khayaban-e-Hilal, Phase 6, D.H.A.,  
Karachi
5. Orangi Pilot Project- Research & Training Institute  
(OPP-RTI),  
Through its authorized person,  
Registered as a Society under the  
Societies Registration Act, 1860,  
Having its registered office at  
Street 4, Sector 5/A, Qasba Colony,  
Manghopir Road, Karachi-75800
6. Pakistan Institute of Labour  
Education & Research,  
Through its authorized person,  
Registered as an Association under  
Section 42, Companies Ordinance, 1984,



Having its registered office at PILER Centre,  
ST-001, Sector X, Sub-Sector V,  
Gulshan-e-Maymar,  
Karachi-75340

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7. Urban Resource Centre,  
Through its authorized person,  
A Society registered under the  
Societies Registration Act, 1860,  
Having its registered office at  
A-2/2, 2<sup>nd</sup> Floor, Westland Trade Centre,  
Commercial Area, Shaheed-e-Millat,  
Karachi.....Petitioners

Versus

1. Federation of Pakistan,  
Through the Secretary,  
Ministry of Interior,  
Pak. Secretariat, R Block,  
Islamabad
2. Federation of Pakistan,  
Through the Secretary,  
Ministry of Law and Justice,  
Islamabad
3. Province of Sindh  
Through the Chief Secretary,  
Government of Sindh,  
Sindh Secretariat,  
Karachi
4. Province of Sindh  
Through the Home Secretary, *Mr. Farooq Naik*  
Government of Sindh,  
Sindh Secretariat,  
Karachi
5. Pakistan Rangers,  
Through Director General,  
Head Quarters Pakistan Rangers (Sindh),  
Muslim Jinnah Courts Buildings,  
Dr. Zia ud Din Ahmed Road,  
Karachi
6. Acting Inspector General of Police, PSP,  
Sindh Police,  
C.C.P.O., Office,  
I.I. Chundrigar Road,  
Karachi



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7. Allah Dino Khawaja, PSP,  
Inspector General of Police,  
Sindh Police,  
C.C.P.O., Office,  
I.I.Chundrigar Road,  
Karachi.....

*Shahab Usto.*

Respondents

CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973



*[A long, thin, handwritten signature or scribble extends diagonally across the lower half of the page.]*

*Order Sheet*  
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-7097 of 2016

Date Order with signature of Judge

**03.04.2017**

Mr. Faisal Siddiqui, Advocate for the petitioners.  
Mr. Zameer Ghumro, Advocate General Sindh.  
Mr. Asim Mansoor, DAG.

There are before us two applications that the petitioners seek to file. One application is a contempt application, CMA No.10049/2017, and the other is an application for interim relief, CMA No.10050/2017. Copies of these applications have been provided to the learned Advocate General Sindh, who may take instructions, file reply etc. Applications are taken on record.

Learned counsel for the petitioners draws attention to order dated 28.12.2016, in the operative part of which certain interim relief was granted, and reads as follows:

“Contentions raised require consideration. Let notice be issued to the respondents as well as Advocate General Sindh and Attorney General for Pakistan for 12.01.2017, till then the respondent No.7 shall not be dealt with in violation/contradiction of the judgment of the Apex Court, referred to above, by his removal”.

Learned counsel for the petitioners stated that the constitutional issues as raised in the petition have been set out in the order of 28.12.2016 but at present the petitioners are aggrieved by the alleged disobedience and disregard of the operative part thereof as reproduced above. Learned counsel submits that in terms of the interim relief granted, it had been directed that the respondent No.7 was not to be dealt with in a manner in violation of the judgment of the Supreme Court in the well-known *Anita Turab* case by his removal. With reference to the applications filed today, learned counsel referred to an order dated 31.03.2017 issued by the Government of Sindh and addressed to the Federal Government whereby the services of respondent No.7, who on that date was serving in the office of Inspector General of Police Sindh, were surrendered to the Federal Government and it was further stated that the Government of Sindh recommended the names of three (03) officers (as listed in the order) for appointment as Inspector General of Police Sindh in place of respondent No.7. Learned counsel referred to the follow up notification dated 01.04.2017 whereby firstly, the respondent No.7 was relieved from the post of Inspector General of Sindh with immediate effect



and directed to report to the Establishment Division of the Government of Pakistan and secondly, Mr. Sardar Abdul Majeed was directed to hold charge of the said post of Inspector General of Police Sindh in addition to his own duties. We may note that both the respondent No.7 and Mr. Sardar Abdul Majeed are officers in the Police Service of Pakistan, which is an All-Pakistan service within the meaning of Article 240 of the Constitution. On queries from the Court, learned Advocate General Sindh accepted that the post of Inspector General of Police in any Province was to be held only by an officer of the Police Service of Pakistan.

Learned counsel for the petitioners submitted that the order and notification referred to above were in complete violation of the interim order made in this petition on 28.12.2016 and sought suitable relief both in terms of appropriate action against the alleged contemnors and also by way of further/fresh interim relief as prayed in CMA 10050/2017.

Learned Advocate General Sindh strongly opposed both applications without prejudice to his right to file an appropriate reply to the same and in particular strongly opposed the grant of further/fresh interim relief as today prayed for. Learned Advocate General Sindh submitted that the respondents were not in violation of the order dated 28.12.2016 and that in any case matters relating to transfer/posting etc. as here relevant were peculiarly within the provincial domain and that, therefore, the Government of Sindh had appropriately exercised its powers in this regard by issuing the order and notification referred to above.

On an query from the Court, learned Advocate General Sindh submitted that the legal power with regard to the Police force of the Province in general and in particular in relation to the Inspector General of Police vested in the Provincial Government in terms of ss. 3 and 4 of the law currently in force in this Province, being the Police Act 1861 ("Police Act"). Learned Advocate General further submitted there are the constitutional challenge to the Provincial Assembly Act of 2011, whereby the Police Order 2002 ("Police Order") had been repealed and the Police Act reinstated insofar as this Province is concerned, were without merit.

We have considered the rival submissions especially in the context of whether the petitioners have been able to make out a prima facie case with regard to the grant of further/fresh interim relief. On a query from the Court, learned Advocate General, candidly and quite properly, stated before us that the order and notification referred to above had not been issued as a result of decisions taken by or in the Provincial Cabinet. The reason for this query,


which was of course explained to the learned Advocate General, was in the context of the very recent and seminal judgment of the Supreme Court reported as *Mustafa Impex and others v. Government of Pakistan and others* PLD 2016 SC 808, wherein the Supreme Court has considered in considerable detail the proper constitutional meaning of "Federal Government" (and, in our respectful view, by necessary extension and implication also "Provincial Government") and has held, in the specific context of the exercise of statutory powers that if such powers are conferred on the Government concerned, they can be exercised in the Cabinet and by Cabinet decisions, and not otherwise. In this regard, we draw attention in particular to the concluding para 84 of the judgment, where the conclusions have been summarized and inter alia in sub-para (iii) it is held as follows:

"Neither a Secretary, nor a Minister and nor the Prime Minister are the Federal Government and the exercise, or purported exercise, of a statutory power exercisable by the Federal Government by any of them, especially, in relation to fiscal matters, is constitutionally invalid and a nullity in the eyes of the law...."

Turning briefly to the constitutional point as raised on the merits of the case by the petitioners, prima facie, it appears to us that perhaps principal reliance has been placed by the petitioners on the subject of "criminal procedure" that continues to remain in the concurrent field even after the 18<sup>th</sup> Amendment to the Constitution. As we understand it (though this is only prima facie), the case of the petitioners is that the Police Order is saved as a federal law on account of its pith and substance being relatable to "criminal procedure", which as just noted continues to remain in the concurrent list and that, therefore, the Provincial Act of 2012 purporting as it does (according to the petitioners) to repeal a federal law is ultra vires the Constitution. While of course, all the parties will be heard on the merits of the case, by way of a tentative observation only, we draw the attention of the learned counsel for the petitioners to the historical and constitutional background of the legislative lists of the 1973 Constitution (and of course there is only one such list now). It appears that in terms of legislative powers, there was a specific entry in relation to "Police" in the Government of India Act, 1935 in the legislative lists of that Act (see 7<sup>th</sup> Schedule, List II, Entry No. 3). The lists of the Government of India Act, 1935 are of course the precursors of all the legislative lists of the various Constitutions that have prevailed from time to time in this country including the present Constitution as well as the Indian Constitution. In all of the said Constitutions which contain three lists, it appears that there is/was a specific entry relating to "Police" in the exclusive Provincial List. (See the Indian Constitution, 7<sup>th</sup> Schedule, List II, Entry No.



2 (subject to a modification not presently relevant), the 1956 Constitution, 5<sup>th</sup> Schedule, Provincial List, Entry No. 3 and the Interim Constitution, 4<sup>th</sup> Schedule, List II, Entry No. 3). Thus, prima facie, "Police" had been made a purely Provincial subject in terms of these Constitutions. Therefore (and tentatively), since it appears to us that the constitution of a police force would be a matter relatable to such Entry, it would appear to fall within the Provincial domain with the result that it would not be relatable (apparently) to subject/entry of "criminal procedure". If at all this is correct (and we emphasize again that this is a tentative observation), it would appear that the Police Order, after the 18<sup>th</sup> Amendment was a law that fell in the Provincial domain (and perhaps was always in the said domain) with the result that perhaps the Provincial Assembly in this Province did have the constitutional and legislative competence, insofar as this Province is concerned, to repeal the Police Order and replace it with such legislation as it deemed appropriate being, in the present case, a reinstatement of the Police Act. Learned counsel for the petitioners as also learned Advocate General to prepare themselves on this and, of course, on all the other points that they wish to take before the Court.



Learned counsel for the petitioners, drawing attention to the interim order of 28.12.2016, states that reliance had also been placed on the Sindh Government Rules of Business, 1986, with regard to the continuation of all the respondent No.7 in the post of Inspector General of Police. However, on a query from the Court, learned counsel candidly accepted that this plea did not appear as such in the prayer clause of either this or the connected petition, although learned counsel submitted that such a ground had been taken. Learned counsel for the petitioners as also learned Advocate General may also prepare themselves on this point since, prima facie, it does sound on the constitutional plane and in any case is a legal point and decision will be taken later as to whether this point will be entertained when this and the connected petition are taken up on the merits.

Referring to the immediate question which is whether a case has been made out for the grant of fresh/further interim relief, having considered the matter, we direct that till the next date, the order dated 31.03.2017, annexure AA to CMA 10050/2017 as also follow up notification dated 01.04.2017, annexure AA-1 thereto are suspended with immediate effect, with the result that Mr. Sardar Abdul Majeed, if at all he has taken over charge of the office of Inspector General of Police Sindh is, with immediate effect, restrained from acting in such charge, and the respondent No.7 is, with immediate effect, restored to his position as Inspector General of Police Sindh. Interim order made earlier also to continue till next date.

Para-wise comments filed on behalf of Respondent No.5 are taken on record, copy has been supplied to Learned counsel for the petitioners.

Both of these petitions to come up on for final disposal at katcha peshi stage on 06.04.2017 at 11.00 a.m.

Sd/- Muneeb Akhtar  
Judge  
Sd/- Saad Hussain  
Judge

High Priority

- ① Fu Hg on CMA No 10049/17 (Contempt)
- ② Fu Hg on CMA No 10050/17 (Vis 94)
- ③ Fu Hg on CMA No 33848/16 (Stay)
- ④ Fu Hg of Mgr case



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