

HIGH COURT OF AZAD JAMMU & KASHMIR

1. Writ petition No. 2873/2024
Date of institution 13.11.2024
Date of decision 18.11.2024

The AJ&K Bar Council through its Vice Chairman, AJ&K Bar Council Secretariat Block "E" District Headquarter Muzaffarabad.

Petitioner

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary having office at New Secretariat Complex Chatter Muzaffarabad;
2. The Prime Minister of Azad Jammu and Kashmir having office at Prime Minister Secretariat Chatter Muzaffarabad through Principal Secretary;
3. Azad Jammu and Kashmir Cabinet through Cabinet Secretary having office at New Secretariat Chatter Muzaffarabad;
4. The Department of Law, Justice, Parliamentary Affairs and Human Rights through its Secretary having office at New Secretariat Chatter Muzaffarabad.

Respondents

2. Writ petition No. 2872/2024
Date of institution 13.11.2024

1. Ehsan-Ul-Haq Advocate High Court Azad Jammu and Kashmir, Member of the High Court Bar Association Azad Jammu and Kashmir;
2. Waqas Mehmood Shahid Advocate High Court AJ&K, Member of High Court Bar Association Azad Jammu and Kashmir;
3. Obaid-ur-Rehman Advocate High Court AJ&K, Member of Central Bar Association Muzaffarabad Azad Jammu and Kashmir.

Petitioners

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary having office at New Secretariat

- Complex Chatter Muzaffarabad Azad Jammu and Kashmir;
2. Prime Minister of the State of Jammu & Kashmir having office at Prime Minister Secretariat Chatter Muzaffarabad Azad Jammu and Kashmir through Principal Secretary;
 3. Chief Secretary Azad Govt. of the State of Jammu & Kashmir having office at New Secretariat Complex Chatter Muzaffarabad Azad Jammu and Kashmir;
 4. Azad Jammu and Kashmir Cabinet through Secretary Cabinet having office at New Secretariat Complex Chatter Muzaffarabad Azad Jammu and Kashmir;
 5. Presidential Secretariat Azad Jammu and Kashmir through Secretary to President, Aiwan-e-Saddar, Jalalabad Muzaffarabad Azad Jammu and Kashmir;
 6. Department of Law, Justice, Parliamentary Affairs and Human Rights Department through its Secretary having office at New Secretariat Complex Chatter Muzaffarabad Azad Jammu and Kashmir;
 7. Secretary Law, Justice, Parliamentary Affairs and Human Rights Department having office at New Secretariat Complex Chatter Muzaffarabad Azad Jammu and Kashmir.

Respondents

WRIT PETITIONS

BEFORE: _____ **Justice Sadaqat Hussain Raja, C.J.**
Justice Sardar Liaqat Hussain, J.

PRESENT:

Raja Amjad Ali Khan, Advocate for the petitioner in Writ Petition No.2873/24.

Sh. Masood Iqbal, AG for the respondents.

Mr. Hashaam Anjum Khan, Advocate for the petitioners in Writ Petition No.2872/24.

Ch. Muhammad Manzoor, AAG for the respondents.

JUDGMENT:

(Justice Sadaqat Hussain Raja, C.J) In the aforementioned writ petitions, the legality of “The Peaceful Assembly and Public Order Ordinance, 2024 dated

29.10.2024 was questioned. It is significant to mention here that despite, the petitions presented and heard separately, the complexities and interconnectedness of issues have resulted in a resolution through this single judgment.

2. Brief facts as narrated in both the writ petitions are that an Ordinance titled “*The Peaceful Assembly and Public Order Ordinance, 2024 dated October 29, 2024*” was published in the Extraordinary Gazette on October 30, 2024. It is alleged in the writ petitions that the aforesaid Ordinance has been issued in violation of the Constitution, specifically contravening its expressed provisions and undermining both the spirit of the Interim Constitution and Universal Declaration Of Human Rights. In both the writ petitions, it is prayed that the said Ordinance is deemed untenable, hence, quashed and set-aside.

3. Raja Amjad Ali Khan Advocate, the learned counsel appearing on behalf of AJ&K Bar Council argued that the impugned Ordinance is promulgated in abrogation of Constitution and is a severe violation of fundamental rights of the State Subjects. He emphasized that the fundamental rights of Assembly, Speech and Association are guaranteed by the Interim Constitution, 1974 and by promulgating the Ordinance, the executive snatched the fundamental rights of the State Subjects. The learned counsel reiterated the facts

and grounds mentioned in the writ petition and prayed for acceptance of the writ petition.

4. Sh. Masood Iqbal, the learned Advocate General voluntarily appeared on behalf of the respondents and opposed the arguments of the learned counsel for the petitioner. In support of his arguments, the learned AG relied upon an unreported judgment of this Court titled as “Mahmood Ahmed Musafir Vs. Deputy Commissioner Muzaffarabad and another” decided on 13.04.2016 and prayed for dismissal of the writ petition in limine.

5. Mr. Hashaam Anjum Advocate, the learned counsel appearing on behalf of the petitioners in Writ Petition No.2872/24 submitted that the Ordinance is promulgated in violation of the expressed provisions of Interim Constitution, 1974. He further submitted that the impugned Ordinance is not maintainable and reiterated the facts and grounds mentioned in the writ petition.

6. Ch. Muhammad Manzoor, the learned AAG also voluntarily appeared on behalf of the respondents and opposed the arguments of the learned counsel for the petitioner and prayed for dismissal of the writ petition in limine.

7. We have heard the learned counsel for the parties, examine the impugned Ordinance and perused the record carefully.

8. It is pertinent to mention here that the impugned Ordinance consists of 10 Sections and Preamble. In Preamble, the necessity of promulgating the Ordinance is clearly stated, which is basic requirement for promulgation of an Ordinance as outlined in Article 41 of the Interim Constitution, 1974.

The aforesaid Article is reproduced as under:-

“41. Power to make Ordinance:-(1)The President may, except when the Assembly is in session, if satisfied that circumstances exists which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require.

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of the Assembly and shall be subject to like restrictions as the power of the Assembly to make law, but every such Ordinance,-

(a) shall be laid before the Assembly and shall stand repealed at the expiration of four months from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution:

[provided that the Assembly may by a resolution extend the Ordinance for a further period of four months and it shall stand repealed at the expiration of the extended period.]

(b) may be withdrawn at any time by the President.

(3) Without prejudice to the provisions of sub-Article(2), an Ordinance laid before the Assembly shall be deemed to be a Bill introduced in the Assembly.”

9. According to Article 41 of the Interim Constitution, 1974, the President's satisfaction is necessary for issuance of an Ordinance and it is not mandatory to disclose the reasons for issuing the Ordinance in the document for information of public.

10. We have to examine the legality of the Ordinance in question concerning the fundamental rights clearly outlined in the Interim Constitution, 1974. This involves analyzing the provisions of Ordinance align with or potentially in conflict with these rights and freedom guaranteed in the aforesaid Constitutional framework. The relevant and significant Section of the Interim Constitution, 1974, particularly in Article 4 enumerates total six distinct rights. These rights are as follows:-

- 4(5). Freedom of movement;
- 4(6). Freedom of Assembly;
- 4(7). Freedom of Association;
- 4(8). Freedom of trade, business or profession;
- 4(9). Freedom of speech;
- 4(10). Freedom of religion.

11. According to the pleadings and arguments of the learned counsel for the parties, the only question that arises is *whether the fundamental rights mentioned in the Article of Interim Constitution, 1974 are absolute?* To answer this question, we have to analyse the above mentioned clauses of the Interim Constitution, 1974.

12. From plain reading of the above-mentioned clauses of Article 4, it is crystal clear that these rights are not absolute. All these rights are subject to the limitations as mentioned in the Constitution. These rights are articulated in broad terms, necessitating the establishment of reasonable restrictions to prevent potential misuse, and specific conditions have been mentioned upon which these rights may be curtailed. All the above-mentioned clauses of Article 4 emphasize that any restriction imposed must be reasonable. The only Section 5 of the impugned Ordinance empowers the District Magistrate to impose ban on the Assemblies. The aforesaid Section is reproduced as under:-

“5. Power to Impose Ban on Assemblies:- (1)
The District Magistrate shall have the authority to impose a ban on any assembly within the District if,-

- (a) the assembly poses a risk to national security or public safety;
- (b) there are credible reports from law enforcement agencies indicating a substantial risk of violence or public disorder;
- (c) the assembly disrupt the daily activities of the community, impede the movement of people and goods, or infringe upon paragraph 8 of sub-Article (4) of Article 4 of the Azad Jammu and Kashmir Interim Constitution, 1974, which ensures the freedom of trade, business and profession; or
- (d) another procession or assembly is already ongoing within the District, and the additional assembly would increase disruptions or pose additional security risks.

(2) The order for a ban shall be issued in writing stating the specific reasons for the ban, and shall be communicated to all relevant authorities and persons concerned;

(3) The ban shall remain in force for the duration specified by the District Magistrate, which may be extended if the conditions necessitating the ban persist;

(4) Any person or Organization affected by the ban may file a revision before the Commissioner of the Division within fifteen days of the issuance of the order.”

13. In the aforesaid Section, no new ground has been mentioned to impose ban on the Assembly. Such ban is provided in Article 4(4) sub-Articles (6), (7) and (9) of the Azad Jammu and Kashmir Interim Constitution, 1974, which is as under:-

“4(6). **Freedom of Assembly**:- Every State Subject shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order;

4(7). **Freedom of Association**:- (1) Every State Subject shall have the right to form association or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan and Azad Jammu and Kashmir, morality or public order.

(2) Every State Subject, not being in the Service of Azad Jammu and Kashmir, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of the State and such law shall provide that where the Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of the State, the Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final;

(3) No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to, the ideology of the State's accession to Pakistan;

(4) Every political party shall account for the source of its funds in accordance with law.

4(9). Freedom of Speech:- Every State Subject shall have the right to freedom of speech and expression, subject to any reasonable restrictions imposed by law in the interest of the security of Azad Jammu and Kashmir, friendly relations with Pakistan, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.”

These clauses of the Interim Constitution curtail the fundamental rights subject to the following conditions:-

- (i) propagate against, or take part in activities prejudicial or detrimental to, the ideology of the State's accession to Pakistan;
- (ii) Ensuring security of Azad Jammu and Kashmir;
- (iii) Maintaining friendly relations with Pakistan;
- (iv) Preserving public order;
- (v) avoiding contempt of Court;
- (vi) Or refraining from defamation;
- (vii) Preventing of an offence.

In summary, while the Interim Constitution uphold fundamental rights, these rights comes with specific limitations designated to protect the integrity, security, ideology and social fabric of Azad Jammu and Kashmir. These clauses, therefore, result a balance between individual's freedom and collective social responsibilities.

14. Almost all of these grounds have been mentioned to justify the ban imposed by Section 5 of the Ordinance, hence, the aforesaid Section does not conflict with the Azad

Jammu and Kashmir Interim Constitution, 1974. It is pertinent to mention here that the phrase reasonable restrictions have been mentioned in the Interim Constitution, 1974 but it has not been defined. In our estimation, the impugned Ordinance provides “*reasonable restrictions*” to implement the fundamental rights i.e (i) to regulate the Assembly as defined in the Ordinance (ii) to protect public at large for inconvenience (iii) to protect the fundamental rights of Interim Constitution, 1974 (iv) to safeguard the society (v) security of the State Subjects etc.

15. It should be noted that the term “reasonable restrictions” must be guided by logic rather than arbitrariness. The restrictions should not be excessive and do not harm the public order. These restrictions should be reasonable and it should be in the public interest. It should be for maintaining public order, safeguarding public health, upholding morality and it can be adopted based on the specific prevailing circumstances.

16. It is also pertinent to note that the impugned Ordinance, consolidates and regularizes the prevailing laws, whereby the restrictions have been imposed. For example, Article 4 of the Azad Jammu and Kashmir Interim Constitution, 1974 imposed “reasonable restrictions” as

mentioned in the above paragraph. Some restrictions are as under:-

- (i) for security of the State Subjects;
- (ii) maintenance of public order;
- (iii) contempt of Court (Article 45 of the Azad Jammu and Kashmir Interim Constitution, 1974) ;
- (iv) defamation;
- (v) Arms Act;
- (vi) Provisions provided in Chapter IX to XI of Cr.P.C empowers the District Magistrate to issue order in urgent cases, use of civil and military force to disburse the Assembly;
- (vii) Sections of Penal Code regarding punishments of unlawful Assembly, nuisance and defamation etc.;
- (viii) Police Act.

17. From perusal of the impugned Ordinance, it reveals that it is considerably more reasonable in comparison to the existing laws mentioned in the preceding paragraph, which empowers the District Magistrate to control law and order situation. The existing laws are unguided and uncontrolled. In contrast, the impugned Ordinance introduces a significant improvement in this regard as it distinctly allows for an appeal or revision process against such orders. This change ensures that the voices of individuals impacted by these orders can be heard and considered in a fair manner.

James Madison, the eminent juristic pointed out
as under:-

“If men were angels, no Government would be necessary. If the angels were to be govern men, neither external or internal controls or Government would be necessary. In framing Government, which is to be administered by men, the great difficulty lies in this. You must first enable the Government to control the Governed; and next place oblige it to control itself.”

18. In this view of matter, The Azad Jammu and Kashmir Interim Constitution, 1974 rightly defines the relations between the Government and the State Subjects. The Interim Constitution provides fundamental rights which impose restriction on the Government but these fundamental rights are crubed by some reasonable restrictions to balance the society.

19. It is also worthwhile to mention here that in a case titled as **“Mahmood Ahmed Musafir Vs. Deputy Commissioner Muzaffarabad and another”** decided on **13.04.2016**, this Court has already directed the District Administration to regulate the processions and rallies to protect the public at large for inconvenience and to mention specific place for procession and rallies.

The upshot of the aforesaid discussion leads to conclude that the impugned Ordinance does not call any

interference. Accordingly the writ petitions are dismissed in limine as no order as to the costs.

Muzaffarabad.

18.11.2024

CHIEF JUSTICE JUDGE

Note:- Judgment is written and duly signed. The office is directed to intimate the parties or their counsel.

CHIEF JUSTICE JUDGE