

IN THE SUPREME COURT OF PAKISTAN
(Suo Motu Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
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)

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 Shaukat 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, CJ. – For the reasons to

be recorded later, petition is adjourned 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.*

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.

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

Lahore,
25.10.2005
Irshad/*

3. Notice to the thread (*ڈھری*) manufacturers be also issued to appear either personally or through their advocates on the next date of hearing to explain as to why the Metallic as well as Nylon thread (*ڈھری*) being used by them may not be prohibited/banned.
4. A perusal of the Judgment reported in the case of K.B.Threads (Pvt) Ltd through Chief Executive and others V. Zila Nazim, Lahore and others (PLD 2004 Lahore 376), indicates that against the order passed by the Zila Nazim enforcing the provisions of Section 144 Cr.P.C, Writ Petition was filed by K. B. Threads (Pvt) Ltd through its Chief Executive and others. Notice be also issued to K.B. Traders (Pvt) Ltd through Advocate General who would procure their address from the file of the High Court.
5. Mr. Muhammad Akram Sheikh, Sr. ASC voluntarily agreed to appear on behalf of one of the victim Faheem Irshad after collecting relevant material on the issue. M/s Shahid Hamid and Qamar Afzal, ASCs will also appear to assist the Court voluntarily.
6. In the meantime notices to all the DCOs be also issued to submit a comprehensive report about the steps taken by them for enforcement of the provisions of Sections 141, 142, 143 & 144 read with item No.34, Part-II, 4th Schedule of the Punjab Local Government Ordinance 2001.

Adjourned to 25th October 2005 to be fixed at Lahore.

Islamabad
07-10-2005
Saeed/*

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice M. Javed Buttar
Mr. Justice Raja Fayyaz Ahmed

SUO MOTU CASE NO.11 OF 2005.

Lost of lives of innocent Children due to Kite flying.

Attendance.

1. *Raja Muhammad Irshad, DAG*
2. *Mr. Aftab Iqbal Chaudhry, AG (Pb)*
3. *Mr. Muhammad Akram Sheikh, Sr. ASC*
4. *Mr. Shahid Hamid, Sr. ASC*
5. *Mr. Qamar Afzal, ASC*
6. *Raja Abdul Ghafoor, AOR.*

Date of hearing : 07-10-2005

ORDER

In response to notice the Advocate General (Punjab) appeared and stated that as per direction of the Court publication was made in at least ten newspapers and in response whereof few suggestions have also been received from the public to control and regularize the act of Kite Flying with Metallic thread (سُر). Copies of the same are not available. He may place the same on record on the next date of hearing.

2. *In the meantime the Government of Punjab through Inspector General of Police is directed to issue instructions to all concerned SPs to register the names of the persons dealing with the trade of thread (سُر) as well as manufacturing of Kites. Affidavit from each of them should be taken to disclose the material being used by them in manufacturing of thread (سُر) for the purpose of Kite flying. After this comprehensive exercise, the list should be handed over to the Advocate General Punjab, who will produce the same on the next date of hearing for our perusal.*

IN THE SUPREME COURT OF PAKISTAN

(Suo Motu Jurisdiction)

Present

*Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
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)

*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)
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*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, CJ. – *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 Nazeer Ahmed Zaidi, resident of Rahimyar 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 "سہم نجوموں کے گرنے سے لڑکیوں کے ہاتھ اور پتنگ بازی" 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.

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,

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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*

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	5,897,000	1,093,862,091
2005 up to September	124917	483,436,325	4867	456,190,777	129784	939,627,102	12,211,056	951,838,158

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

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

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*

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.

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.

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

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*

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In the Supreme Court of Pakistan
(Original Jurisdiction)

Present:

Mr. Justice Rana Bhagwandas, (ACJ)
Mr. Justice Saiyed Saeed Ashhad
Mr. Justice Hamid Ali Mirza

Suo Moto Case No.11 of 2005

Date of hearing: 5.1.2007

Order

Whereas it has been brought to our notice that despite restraint order dated 25.10.2005 passed in Suo Moto Case No.11 of 2005, the Government of Punjab has decided to allow kite flying and allied business during the forthcoming Basant festival scheduled on 25.2.2007. Prima facie, the decision of Punjab Government appears to be violative of the Court direction.

2. Let report be called from the Chief Secretary of Punjab on the subject specifying the public safety measures proposed to be adopted and notice be issued to Advocate General Punjab to appear before the Court after seeking instructions and assist the Court in the pending case. To be listed on 22.1.2007.

Karachi
5th January, 2007
Riaz

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 /**

APPROVED FOR REPORTING.

4

In the Supreme Court of Pakistan
(Original Jurisdiction)

Present:

Mr. Justice Rana Bhagwandas, ACJ
Mr. Justice Saiyed Saeed Ashhad
Mr. Justice Hamid Ali Mirza

Suo Moto Case No.11 of 2005

Date of hearing: 5.1.2007

Order

Whereas it has been brought to our notice that despite restraint order dated 25.10.2005 passed in Suo Moto Case No.11 of 2005, the Government of Punjab has decided to allow kite flying and allied business during the forthcoming Basant festival scheduled on 25.2.2007. Prima facie, the decision of Punjab Government appears to be violative of the Court direction.

2. Let report be called from the Chief Secretary of Punjab on the subject specifying the public safety measures proposed to be adopted and notice be issued to Advocate General Punjab to appear before the Court after seeking instructions and assist the Court in the pending case. To be listed on 22.1.2007.

Karachi
5th January, 2007
Riaz

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Apropos of news item under caption, "Time-bound kite flying to be allowed", appearing in the daily Dawn, Islamabad of date (copy enclosed), the Punjab Government has decided to allow kite flying and allied business during the forthcoming *Basant* festival, scheduled on 25th February, 2007. The duration of the kite flying is to be announced later.

The announcement follows the approval by the Chief Minister, Government of the Punjab on recommendation of a Committee formed to suggest ways and means to allow kite flying and allied business in the Province of the Punjab. Under the proposed arrangements, the activity will be carried out in a regulated manner. Various measures/specification of the size and material to be used in making kite/twine etc. have been prescribed. It is further stated that the business/activity will be carried out under an Association of kite dealers and manufacturers to be registered under the Company's Act.

The decision to allow kite flying and related business, seemingly is in violation of the restraining order, dated 25th October, 2005 of the Supreme Court in the case *Suo Motu No.11 of 2005* as under:

- 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."*

Copy of the detailed order is enclosed.

Submitted.

5.1.2007.

HACJ

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Javed Iqbal
Mr. Justice Abdul Hameed Dogar
Mr. Justice Sardar Muhammad Raza Khan
Mr. Justice Khalil-ur-Rehman Ramday
Mr. Justice Muhammad Nawaz Abbasi
Mr. Justice Mian Shakirullah Jan
Mr. Justice Saiyed Saeed Ashhad
Mr. Justice Nasir-ul-Mulk

SUO MOTU CASE NO. 11 OF 2005

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

For the Government : Mr. Aftab Iqbal Chaudhry,
of Punjab Advocate General Punjab.
Mr. Khadim Hussain Qaiser,
Additional Advocate General Punjab.

: Mr. Raja Saeed Akram, AAG.
Ms. Afshan Ghazanffar, AAG.

Date of hearing : 22.01.2007.

ORDER

In response to notice dated 4th January 2007, a reply has been submitted on behalf of Chief Secretary, Government of Punjab by the learned Advocate General Punjab, wherein allegation of violating the order dated 25th October 2005 has been denied. According to him Press Conference was addressed by Mr. Salman Ghani, Chairman Planning and Development Board, wherein he stated that subject to approval/permission of this Court, Jashn-e-Baharan (Basant) will be celebrated between the night of 24th and 25th February 2007. We are not satisfied from his this statement therefore learned Advocate General is directed to file complete extract of the Press Conference. In the meantime, Mr. Qayyum Siddiqui, representative of the GEO TV is directed to procure film of the said Press Conference and produce the same in Court on the next date of hearing.

2. There is an application which has been moved, seeking permission to celebrate Jashn-e-Baharan (Basant). It has also been informed by the Advocate General that the Provincial Government has issued the Punjab Prohibition of Kite Flying (Amendment) Ordinance 2007. We may observe that if the Government of Punjab had already decided to allow the activities of kite flying by issuing Ordinance, then why permission is being sought from this Court. In our opinion, perhaps for the reason that we have issued notice on 4th January 2007, in respect of Press Conference, which was addressed by the Chairman P&DB, conveying decision of the Government to media. Therefore, in our opinion, once the Government itself had decided to celebrate Basant, then it is its duty to deal with the matter independently and no permission, under these circumstances, is called for. Application thus accordingly dismissed.

Let the matter be adjourned to a date in office for filing of the extract of the Press Conference as directed herein above and passing further orders accordingly.

Islamabad,
22.01.2007.

 25/1

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IN THE SUPREME COURT OF PAKISTAN
(Suo Motu Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
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)

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 Shaukat 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, CJ. – 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 Nazeer Ahmed Zaidi,
resident of Rahimyar Khan with the request that on having gone through it,

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*

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	5,897,000	1,093,862,091
2005 up to September	124917	483,436,325	4867	456,190,777	129784	939,627,102	12,211,056	951,838,158

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*

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

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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*

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.

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.

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

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 /**

APPROVED FOR REPORTING.

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Khalil-ur-Rehman Ramday.
Mr. Justice Faqir Muhammad Khokhar
Mr. Justice Ch. Ijaz Ahmed.
Mr. Justice Karamat Nazir Bhandari

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)

For the Govt. of Punjab : Mr. Aftab Iqbal Chaudhry, AG. (Pb)
Mr. Saleem Sikandar, AIG, Police

For the Govt. of Balochistan : Mr. Salahuddin Mengal, AG

For the Attorney General : Dr. Danishwar Malik, DAG

For the Govt. of NWFP. : Haji M. A. Qayyum Mazhar, Addl. AG
Mr. Mehmood A. Qureshi, AOR.

On Court Notice : Mr. Bilal Ahmer Sufi, ASC
Mian Aamir Mehmood, District Nazim, Lhr.

For WAPDA : Mr. Shahid Hamid, Sr. ASC with
Muhammad Akram Arain, CEO LESCO.

For the Victims. : Mr. M. Akram Sheikh, Sr. ASC
Muhammad Fahim Shehzad
Muhammad Ashfaq with his son
Abdullah Umar.

For Kite Dealers/Manuf. : Malik Muhammad Qayyum, ASC
Mr. A. H. Masud, AOR

For Kite Dealers Faizalabad : Mr. M. Afzal Sindhu, ASC

For Agriculturist/Cultivators : Ch. Muhammad Ashraf, ASC

For K.B. Traders/Kite Sellers : Mr. S. M. Masud, ASC

Date of hearing : 08-12-2005.

ORDER

Parties heard. To come up for further arguments on 9th December 2005.

Lahore, the
08-12-2005
Faridun

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Khalil-ur-Rehman Ramday.
Mr. Justice Faqir Muhammad Khokhar
Mr. Justice Ch. Ijaz Ahmed.
Mr. Justice Karamat Nazir Bhandari

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)

For the Govt. of Punjab : Mr. Aftab Iqbal Chaudhry, AG. (Pb)
Mr. Saleem Sikandar, AIG, Police

For the Govt. of Balochistan : Mr. Salahuddin Mengal, AG

For the Attorney General : Dr. Danishwar Malik, DAG

For the Govt. of NWFP. : Haji M. A. Qayyum Mazhar, Addl. AG
Mr. Mehmood A. Qureshi, AOR.

On Court Notice : Mr. Bilal Ahmer Sufi, ASC
Mian Aamir Mehmood, District Nazim, Lhr.

For WAPDA : Mr. Shahid Hamid, Sr. ASC with
Muhammad Akram Arain, CEO LESCO.

For the Victims. : Mr. M. Akram Sheikh, Sr. ASC
Muhammad Fahim Shehzad
Muhammad Ashfaq with his son
Abdullah Umar.
Mr. Aurangzeb, F/o Tehreen (decd)

For Kite Dealers/Manuf. : Malik Muhammad Qayyum, Sr. ASC
Mr. A. H. Masud, AOR

For Kite Dealers Faisalabad : Mr. M. Afzal Sindhu, ASC

For Agriculturist/Cultivators : Ch. Muhammad Ashraf, ASC

For K.B. Traders/Kite Sellers : Mr. S. M. Masud, ASC

Date of hearing : 09-12-2005.

ORDER

On our direction, Aurangzeb appeared and stated that his minor daughter aged about 2 years had died on account of cut of her throat on 30th October 2005 caused by the kite string for which a case was registered at Police Station Shadbagh, Lahore. He further stated that he and his wife

had compromised the case with Fakhri Butt accused and had forgiven him in the name of Almighty Allah.

2. We appreciate the efforts made by the Government of Punjab and other Provincial Governments whose Advocates General have submitted their statements as well as the administration of Capital Territory with regard to implementation of interim order.

3. We have heard learned counsel appearing in this case at length. Malik Muhammad Qayyum, Sr. ASC has not been able to complete his arguments as Court time is over. Therefore, the case is adjourned to 26th January 2006. However, our order dated 25th October 2005 alongwith its terms and conditions stipulate therein, shall remain in force till the next date of hearing.

4. We hope that further efforts will be made to achieve the better results through the administrative machinery. If need be, to review the situation, a committee of Inspectors General of Police shall be conveyedⁿ at Islamabad before the next date of hearing.

Lahore, the
09-12-2005
Saeed

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IN THE SUPREME COURT OF PAKISTAN
(Suo Motu Jurisdiction)

PRESENT

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ.
MR. JUSTICE KHALIJ -UR-REHMAN RAMDAY
MR. JUSTICE FAQIR MUHAMMAD KHOKHAR
MR. JUSTICE CH. IJAZ AHMED
MR. JUSTICE KARAMAT NAZIR BHANDARI

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)**

For the Govt. of Punjab:	...	Mr. Aftab Iqbal Chaudhry, A.G. (Punjab) with Saleem Sikandar, A.I.G. Police.
For the Govt. of Balochistan:		Mr. Salah-ud-Din Mengal, A.G.(Balochistan)
For the Attorney General:		Dr. Danishwar Malik DAG.
For the Govt. of NWFP:		Haji M. A. Qayyum Mazhar Addl. A.G. (NWFP) with Mr. Mehmood A. Qureshi, AOR.
On Courts notice:		Mr. Bilal Ahmer Sufi, ASC. Mian Aamir Mehmood, City District Nazim, Lahore.
For WAPDA:		Mr. Shahid Hamid, Sr. ASC with Muhammad Akram Arain, CEO LESCO.
For the Victims:		Mr. M. Akram Sheikh, Sr. ASC. with Muhammad Fahim Shehzad and Muhammad Ashfaq with his son Muhammad Abdullah Umar.
For Kite Dealer/Kite Manufacturers:		Malik Muhammad Qayyum, Sr.ASC with Mr. A. H. Masud, AOR.
For Agriculturist/Cultivators:		Ch. Muhammad Ashraf, ASC.
For Kite Dealers Faisalabad:		Mr. M. Afzal Sindhu, ASC.
For K.B. Traders/Kite Sellers:		Mr. S.M. Masud, ASC.
Date of hearing:		8.12.2005.

...

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.- In pursuance of this Court's
order dated 25.10.2005 Mubashar Ahmed, SI/SHO Police Station Rang Mahal produced
two persons, namely, Aamir Sohail and Shaukat Ali and the SHO Police Station Mochi
Gate, namely, Abdul Sattar, produced Muhammad Sarwar, Mehboob and Nazir Ahmed

against whom cases were registered under section 4 of the Punjab Prohibition of Dangerous Kite Flying Activities Ordinance, 2001. They are in custody since 10.11.2005 and challan against them has been submitted in the Court. So far their bail has not been taken by the Magistrate before whom challan has been submitted. The maximum sentence prescribed under section 4 ibid is three months imprisonment or fine which may extend to Rs.15,000. All these accused are ordered to be released forthwith on furnishing their personal bond in the sum of Rs.200/- each. The concerned trial courts are directed to complete the trial within two weeks without fail and send a copy of judgment in each case for our perusal in Chambers. The SHOs are directed to produce the evidence against the culprits on their own responsibility.

2. Similarly the other police officers of different Police Stations registered the cases against the persons who had allegedly violated the provisions of section 4 ibid. 389 persons are in attendance who have been bailed out and have been challaned. However, the concerned trial courts are directed to conclude the trial of their cases within two weeks. The SHOs are directed to produce evidence against them. The final judgments shall be sent by the trial courts to the Registrar of this Court for our perusal.

3. Learned Advocate General Punjab informed that no notice for contempt of the Court for violation of the order was issued. It was also stated by him that Nazims and Naib Nazims of the Town Committees and Union Councils as well as the Councillors and the DCOs had assisted the police in implementing the order of this Court.

4. After passing the order dated 25.10.2005 two untoward incidents had taken place. In one case a minor girl Tehreem had died. A case was registered under section 302 PPC against Fakhari Butt.

5. Muhammad Ashfaq a citizen alongwith his minor son Muhammad Abdullah Umar aged 6 years appeared and pointed out that his said son had also received a cut in his throat and due to this injury his memory had badly affected. The school work which he could earlier do within half an hour would take two hours for the same. He further stated that according to the opinion of the doctors the child required another surgery otherwise a permanent defect would develop in his neck. Learned Advocate General Punjab assured

that Muhammad Abdullah Umar would be given medical treatment at State expense. Similarly another incident is reported by Ahsan Farooqui Advocate High Court in which a Railway Police Constable Rashid was electrocuted through a metallic wire of kite on 20.10.2005 which had fallen on the electric wire and due to the incident he died on 9.11.2005. One Ahsan Rehman also appeared and stated that he had already sent a letter indicating that his brother Mohsin Rehman had died due to such incident with the string wire of flying kite.

6. The learned AG stated that they had convened meetings in order to promulgate law for the purpose making viable to curb the kite flying within the urban areas of Punjab. The learned Advocate General stated that no meeting so far has been convened between the Kite Flying Association and the Government to suggest ways and means for preventing the losses to the lives and the property. In compliance with the order a wide publication had already been made enabling the citizens to be aware that ban had been imposed by this Court on kite flying activities.

7. Mr. Shahid Hamid the learned ASC stated that on account of ban after passing of the order by this Court, losses to the electricity had reduced as many as half of the earlier loss. The contents of the report so submitted by him are reproduced below:-

**“SUMMARY OF 132 & 11 KV TRIPPINGS AND
REVENUE LOSS BEFORE AND AFTER IMPOSING THE BAN ON KITE
FLYING – LESCO.**

STATUS	PERIOD	11 KV SYSTEM		132 KV SYSTEM		TOTAL TRIPPINGS	TOTAL LOSS (Million Rs)
		TRIPPINGS	REVENUE LOSS (Million.Rs.)	TRIPPINGS	REVENUE LOSS (Million.Rs)		
BEFORE BAN	26.9.05 to 25.10.05 (30 days)	6673	21.95	116	8.61	6789	30.56
AFTER BAN	26.10.05 to 25.11.05 (30 days)	3184	10.47	90	6.69	3055	16.38
SAVINGS		52.29 %	52.29 %	22.26 %	22.26 %	55.01 %	46.42%

He further stated that as compared to the first week of December, 2004 (before ban) and the first week of December, 2005 (after ban) the loss had been reduced to a maximum extent after the imposition of ban. The contents of the report are also reproduced below:-

**“SUMMARY OF 132 & 11 KV TRIPPINGS AND
REVENUE LOSS BEFORE AND AFTER IMPOSING THE BAN ON KITE
FLYING (2004 & 2005) – LESCO.**

STATUS	PERIOD	11 KV SYSTEM		132 KV SYSTEM		TOTAL TRIPPINGS	TOTAL LOSS (Million Rs)
		TRIPPINGS	REVENUE LOSS (Million.Rs.)	TRIPPINGS	REVENUE LOSS (Million.Rs)		
LAST YEAR (without ban)	1.12.04 to 6.12.04	1375	4.52	44	3.28	1419	7.80
THIS YEAR (with ban)	1.12.05 to 6.12.05	665	2.19	2	0.15	667	2.34
SAVINGS		51.64 %	51.64 %	95.46 %	95.46 %	53.01 %	70.05 %

He also placed on record certain photographs showing that inspite of the said order of this Court the menace of kite flying had continued. The photographs be kept on record. Similarly he also placed a copy of newspaper cuttings indicating violation of this Court's order.

8. The learned Advocate General stated that in pursuance of the said order a Medical Board was constituted to examine Muhammad Faheem Shahzad. The Medical Board has submitted a report in this behalf. For convenience, the contents of the report are reproduced herein below:-

“Kindly refer to letter No.PA/ATH-Misc/2005 dated 18.11.2005 received through Medical Superintendent on 23.11.2005 {photocopy}.

The patient in reference Mr. Mohammad Faheem Shahzad attended the department of ENT Mayo Hospital, Lahore on 25.11.2005 at 9 AM and was examined by the members of the Board.

The patient produced all the previous record, which the members of the Board thoroughly studied. After examination the Board reaches to the following conclusions.

Patient Mohammad Faheem Shahzad is an old case of traumatic neck injury. He had surgical intervention at Fatima Memorial Hospital, Lahore. Later on he had ENT Specialists opinions from the following institutions.

1. Department of ENT, Liaquat National Hospital, Karachi.
2. Department of ENT, Agha Khan University Hospital, Karachi.
3. Department of ENT, Children Medical Complex, Lahore.

The patient had a uniform opinion from all the above quarters and was declared as having left-sided vocal cord paralysis and sluggish movement of right vocal cord. The patient also has developed narrowing of the airway below the sound

box for which he was operated at Children Hospital, Lahore {tracheostomy done}.

The patient has been repeatedly examined under anesthesia and has been advised necessary treatment at Agha Khan University Hospital, Karachi and by the ENT specialists at Children Hospital, Lahore.

The Board agrees with the specialists opinion already taken and proposes to follow the already prescribed treatment.

Anyhow repeated surgeries on the sound box and windpipe are likely to end up with grievous complications and may not show promising results.

Under the circumstances mentioned above, to stay on tracheostomy at present status may not be a bad option.

Furthermore the patient is advised to remain in touch with his ENT surgeon for future follow-up.”

9. The Head of the ENT Department of Mayo Hospital, Lahore is directed to seek the opinion from outside country and submit a report to the Registrar of this Court for our perusal.

10. Mr. Salahuddin Mengal, learned Advocate General Balochistan submitted that no untoward incident had taken place and the Provincial Government had completely banned kite flying activities in the Province. He further stated that steps were being taken to promulgate law.

11. A report dated 2.12.2005 had been sent by the Government of Sindh wherein the measures taken by the Government to implement the order had been highlighted. For convenience the same is reproduced below:-

“7. In the light of Supreme Court’s directives all the RPOs/CCPO Karachi and DPOs have undertaken the following measures.

- a. Managers of those venues where public functions of Basant are arranged have been asked to comply with Supreme Court directives. In this regard, TPO Saddar, TPO Clifton, TPO Landhi and TPO Korangi have served notices to various Clubs through their SHOs.
- b. Kite Flying Associations are also being taken into confidence by the respective DPOs/TPOs to comply with directives of Supreme Court of Pakistan.
- c. Wide publicity in addition to Provincial Government’s efforts is being arranged by the DPOs through electronic and print media, so that every one knows about the order passed by the Supreme Court of Pakistan.

- d. Wherever and whosoever commits contempt's of Supreme Court's directives shall be bound down by the respective SHOs to appear before the Court and face Court Proceedings."

12. Haji M. A. Qayyum Mazhar, AOR appeared on behalf of the Advocate General NWFP and submitted a report. A perusal whereof indicates that efforts are being made to implement the order banning the kite flying activities in NWFP. Similarly the local Government has been asked to implement the order in letter and spirit. It also indicates that as there is no existing law regarding ban on kite flying activities and manufacture/sale of kites of all kinds, therefore, the Government has prepared a Draft Act which has been sent to the Law Department for vetting. Similarly the Secretary, Local Government NWFP has been asked to appoint inspectors in terms of section 142 of the Local Government Ordinance 2001.

13. Mian Aamir Mehmood City District Nazim Lahore appeared and stated that public of the Province of Punjab particularly of Lahore had welcomed the decision of this Court imposing ban on kite flying activities. He explained that on account of such ban many untoward incidents had been prevented and similarly the Cottage Industry of Steel and Plastic had also started working smoothly because previously on account of tripping it was not possible for them to run their industries properly. He committed that the City District Government would fully cooperate in implementing the directions if issued in future as well. He was also of the opinion that ban on all kinds of kite flying activities should be imposed to save the lives and property as according to him number of persons had died during the Basant and similarly loss caused to the industry. According to him the Lahore is the city of learning and not the city of celebrating Basant. There are educational institutes which are established about 150 years ago. He further stated that according to the policy of the Local Government on account of Earthquake of 8th October, 2005 there would be no festivity of Basant at Government level.

14. He further stated to control the kite flying activities complete ban be placed on the manufacturing, sale and transportation etc. of the strings and kites. On our suggestion he stated that those persons who are involved in preparation of kites can be accommodated

by providing financial assistance for which purpose he would convene a meeting with the financial institutions so that they could start respectable business instead of this illegal business which is causing loss to the lives and the property.

15. The Inspector General of Police Islamabad has also submitted a report indicating that the steps are being taken for implementing this Court's order.

16. M/s Shahid Hamid, Muhammad Akram Sheikh, Muhammad Afzal Sindhu, Ahmer Bilal Sufi, ASCs and others appeared for the parties and argued the case at considerable length when the proceedings were adjourned for 9th December 2005. Learned Advocate General Punjab is directed to produce the father of minor Tehreem who had died due to cut of her throat during kite flying. Malik Muhammad Qayyum, Sr. ASC will commence his arguments tomorrow i.e. 9th December 2005.

Lahore, the
8th December, 2005.

NOT APPROVED FOR REPORTING.

M. Faridun

45

IN THE SUPREME COURT OF PAKISTAN
(Suo Motu Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Tassaduq Hussain Jilani

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)

- For the Govt. of Punjab* : *Mr. Aftab Iqbal Chaudhry, AG. (Pb)*
Mr. Saleem Sikandar, AIG, Police (Pb).
- For the Govt. of Balochistan:* *Mr. Salahuddin Mengal, AG.*
- For the Govt. of NWFP.* : *Mr. Muhammad Saeed Khan, Addl.AG*
Mr. Mehmood A. Qureshi, AOR.
- For the Govt. of Sindh* : *Nemo.*
- For WAPDA* : *Mr. Shahid Hamid, Sr. ASC with*
Mr. M. Akram Arain, CEO, LESCO.
Mr. Ejaz Farrukh, Sr. Law Officer,
Health Department (Punjab).
- For the Victims.* : *Mr. M. Akram Sheikh, Sr. ASC*
Muhammad Ashfaq.
- For Kite Dealers/Manuf.* : *Malik Muhammad Qayyum, Sr. ASC*
Mr. A. H. Masud, AOR.
- For Islamabad Police* : *Mr. Darya Khan, ASI.*
- Contemnors produced by* : *Pervaiz Ahmed, Shakoore Ahmed*
Islamabad Police : *Khan Zareen, Ameer Zaman, Imtiaz,*
Luqman, Muhammad Umar, Waqar Azeem,
Saleh Muhammad, Nazim Hussain.
- For Kite Dealers Faisalabad:* *Mr. M. Afzal Sindhu, ASC (Absent).*
- For Agriculturist/Cultivators:* *Ch. Muhammad Ashraf, ASC*
- For K.B. Traders/Kite Sellers:* *Mr. S. M. Masud, ASC.*
- Date of hearing* : *26.01.2006.*

ORDER

Mr. Darya Khan, ASI (Islamabad) appeared and produced Khan Zareen, Ameer Zaman, Imtiaz and Luqman and stated that Shaukat Ali, SI had registered cases against them for violating the order of this Court.

2. It may be noted that except Khan Zareef, remaining three are boys, aged below 10 years. We failed to understand as to why against them cases have been registered. However, if they were found committing violation of the order of this Court, the police may have arrested those persons, who are responsible for supplying them kites and threads. It is informed by Darya Khan, ASI that the authorities had already taken notice of this fact and initiated proceedings against Shaukat Ali SI. On our query 'as to whether he has been suspended so far or not', he could not answer satisfactorily. Inspector General of Police (Islamabad) is directed to look into the matter and submit report in this behalf within a period of seven days to the Registrar of this Court for our perusal in Chambers. The minors found allegedly responsible for violating the law as well as the order of this Court, however, are exonerated with the advice to be careful in future and instead of indulging into such activities, may concentrate in their studies. So far as Khan Zareef is concerned, against him case may proceed in accordance with law.

3. Similarly, Shakoor Ahmed and Pervez Ahmed have also been produced from Islamabad and case has been registered against them under Section 188 PPC at Police Station Shehzad Town. They are on bail. The Trial Court is directed to proceed against them in accordance with law. So far as, notices issued against them for violating the judgment of this Court, are concerned, those shall remain pending till further orders. However, they are not required to attend this Court and shall submit their reply by registered post, to the Registrar of this Court.

4. Likewise, Muhammad Umar, Waqar Azeem, Saleh Muhammad Nazim Hussain have also been produced from Islamabad, against whom cases for violating the judgment of this Court have been registered. Trial Court is directed to proceed with the cases registered against them in accordance with law. So far as, notices issued against them for violating the judgment of this Court, are concerned, they are directed to submit their reply in writing to the Registrar of this Court. However, they are not required to attend the Court, unless otherwise directed.

5. Mr. Shahid Hamid, learned ASC stated that after imposing the ban on kite flying activity, number of tripping of electricity have been considerably reduced by 2/3rd and during the period from 1st January 2006 upto date, total number of tripping is 2028. It is also informed by the learned counsel that during the whole period of ban, total number of tripping is 8750 whereas during the last year, without ban, total number of tripping is 26027. In this way, the WAPDA had gained Rs.80 million. Mr. Muhammad Akram Arain, Chief Executive LESCO stated that WAPDA is ready to provide financial support in terms of money proportionately to rehabilitate the labourers, engaged in the business of preparation/ manufacturing of kites and for this purpose Rs.12 lacs have been allocated.

6. In respect of Fahim Shahzad, learned Advocate General Punjab informed that for his treatment, case has been referred to a Hospital, out side the country and report is expected within a fortnight time. In the meantime, learned Advocate General is directed to examine as to whether Fahim Shahzad can be given any temporary job relating to writing etc. Fahim Shahzad is not in attendance. We have been told that he is in hospital on account of some infection in his vocal cord on account of incident.

7. Mr. Muhammad Ashfaq, father of minor Abdullah, who is also facing, somehow, identical problem, appeared and stated that doctors at Muridkay are providing treatment to him but the same is not adequate. On this learned Advocate General stated that Health Department of the Government of Punjab will look into this matter as well and whatever treatment is possible will be provided to him free of cost.

8. Mr. Shahid Hamid, learned ASC also produced application of another boy, Wasim Shahzad, who had also suffered with injury on account of cut by the "Tandi" on his neck on 22nd February 2002 and his voice has also been effected. Health Department, Government of Punjab is directed to look into this matter and provide all possible medical assistance to him, as well.

9. Another boy namely Mr. Muhammad Asim Ikram also appeared and stated that he had also met with same accident. Since he has improved his health, therefore, in our view there is no need to pass any orders in this behalf.

10. Learned Advocate General Punjab placed on record a copy of the Punjab Prohibition of Kite Flying Ordinance 2006 (Punjab Ordinance No.1 of 2006) [herein after referred to as "the Ordinance"]. A perusal whereof indicates that a complete ban has been imposed upon kite flying activities, however, a period of two weeks has been allowed for this activity, during the spring season in a year, subject to permission of the District Nazim, who on the prior approval of the Government, shall issue direction in this behalf. On having gone through the Ordinance, we feel that government must come out with a statement that if at all such activity is to be allowed, it should be for one date throughout in the Province. Similarly, the Government of Punjab must issue a notification, laying down procedure for the registration of manufacturers, traders, etc. who are in the

business of kites and its related items, in terms of Section 4A of the Ordinance.

11. Learned Advocate Generals of NWFP and Balochistan appeared and stated that there has been no violation of the order of this Court in their respective Provinces, however, to control the kite flying activity, their Governments are respectively issuing the Ordinance.

Case is adjourned to 2nd February 2006 for further hearing.

Lahore, the
26.01.2006.
Ishad /*

45

IN THE SUPREME COURT OF PAKISTAN
(Suo Motu Jurisdiction)

Present

Mr. Justice Javed Iqbal
Mr. Justice Faqir Muhammad Khokhar
Mr. Justice M. Javed Buttar
Mr. Justice Tassaduq Hussain Jillani
Mr. Justice Ch. Ijaz Ahmad

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)

& CMA 1771 TO 1846-L/2005 (Liaquat Ali s/o Barkat Ali & 75 others)

& CMA 1867 TO 1875-L/2005 (Bano Bibi widow of Sain Lal Din & 8 others)

For the Govt. of Punjab : Mr. Aftab Iqbal Chaudhry, AG. (Pb)
Mr. Saleem Sikandar, AIG, Police (Pb).
Rao Muhammad Yousuf, AOR
Mr. Ejaz Farrukh, Law Officer

For Attorney General : Dr. Danishwar Malik, Dy. A.G.

For the Govt. of Balochistan: Malik Sultan Mahmood, AAG Balochistan

For the Govt. of NWFP. : Mr. Muhammad Younas Tanoli, AG NWFP
Mr. Mehmood A. Qureshi, AOR.
Mr. M.A. Qayyum Mazhar, AOR.

For the Govt. of Sindh : Nemo.

For WAPDA : Mr. Salahid Hamid, Sr. ASC with

For the Victims. : Mr. M. Akram Sh. Sr. ASC (Application)

For Kite Dealers/Manuf.: Malik Muhammad Qayyum, Sr. ASC
Mr. A. H. Masud, AOR.

For Kite Dealers Faisalabad: Mr. M. Afzal Sindhu, ASC (Absent).

For Agriculturist/Cultivators: Ch. Muhammad Ashraf, ASC.

For K.B. Traders/Kite Sellers: Mr. S. M. Masud, ASC.
Mr. Mahmoodul Islam, AOR

For Qafla Tanzeem : Mr. Liaqat Qureshi, ASC

Date of hearing : 02.02.2006.

ORDER

The learned Advocate General Punjab has submitted that the Punjab Prohibition of Kite Flying Ordinance, 2006 (Punjab Ordinance No.1 of 2006) has been promulgated. A notification of even number dated 1.2.2006 has been issued concerning the registration of manufacturer, trader and seller of kites or kite flying material with the City District Government or the District Government, as the case may be. Before the arguments could be commenced it has been observed that the matter was heard on different occasions by different Benches headed by his lordship the Hon'ble Chief Justice. The view point as canvassed at bar on behalf of different parties on different dates is indicative from the orders passed on 7.10.2005, 21.10.2005, 25.10,2005, 8.12.2005 and 9.12.2005. Two Hon'ble Judges have joined the Bench constituted to hear the matter (Mr. Justice Javed Iqbal, Mr. Justice M. Javed Buttar) on first occasion. It would be therefore, in the interest of justice that matter should either be reargued or be placed before the earlier Bench which aspect of the matter squarely falls within the prerogative and jurisdictional domain of Hon'ble Chief Justice. Malik Muhammad Qayyum, learned ASC has attempted to argue that the direction/prohibition order issued on 25.10.2004 has not been complied with strictly and the Punjab Prohibition of Kite Flying Ordinance, 2006 (Punjab Ordinance No.1 of 2006) is not in consonance with it. It is also pointed out by him that since the question of enforcement of fundamental rights is involved as such vires of the Ordinance may also be examined. This submission would be considered at appropriate time. An application for adjournment has been moved on behalf of

Muhammad Akram Sheikh, learned Sr. ASC. The matter is accordingly adjourned and placed before his lordship the Hon'ble Chief Justice for appropriate order and petition may be fixed during next week.

Lahore,
02.02.2006.
Irshad /*

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IN THE SUPREME COURT OF PAKISTAN

(Suo Motu Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Javed Iqbal
Mr. Justice Faqir Muhammad Khokhar
Mr. Justice Tassaduq Hussain Jillani
Mr. Justice Ch. Ijaz Ahmad

SUO MOTU PETITION NO.11 OF 2005

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

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

& CMA 1771 TO 1846-L/2005 (Liaquat Ali s/o Barkat Ali & 75 others)

& CMA 1867 TO 1875-L/2005 (Bano Bibi widow of Sain Lal Din & 8 others)

For the Govt. of Punjab : Mr. Aftab Iqbal Chaudhry, AG. (Pb)
Mr. Muhammad Akbar Tarrar, Addl: AG Pb.
Mr. Saleem Sikandar, AIG, Police (Pb).
Mr. Khalid Farooq, DIG Lahore.
Mr. Abid Saeed, Dy. Secy: Litigation.
Mr. Ejaz Farrukh, Law Officer

For Attorney General : Dr. Danishwar Malik, Dy. A.G.

For the Govt. of Balochistan: Nemo.

For the Govt. of NWFP. : Mr. Muhammad Saeed, Addl: AG NWFP
Mr. Mehmood A. Qureshi, AOR.

For the Govt. of Sindh : Nemo.

For I.G. Islamabad : Mr. Muhammad Nawaz Jorra, DSP.
Mr. Mohsin Abbas Syed, Director Litigation.

As Amicus Curie : Mr. Shahid Hamid, Sr. ASC

For Labour Union : Khurshid Ahmed, General Secy:
Hydro Electric WAPDA

For the Victims. : Mr. M. Akram Sh. Sr. ASC
Father of Fahim Shahzad &
Wasim Shahzad

For Kite Dealers/Manuf.: Malik M. Qayyum, Sr. ASC
(Application for adjournment).
Mr. A. H. Masud, AOR.

For Kite Dealers Faisalabad: Mr. M. Afzal Sindhu, ASC.
For Agriculturist/Cultivators: Ch. Muhammad Ashraf, ASC. (Absent).
For K.B. Traders/Kite Sellers: Mr. S. M. Masud, ASC.
Mr. Mahmoodul Islam, AOR
Another counsel : Mr. M. Ilyas Khan, Sr. ASC.
For Qafla Tanzeem : Mr. Liaqat Qureshi, ASC
For Chief Editor : Mr. Khalid Mehmood.
Daily Soorat-e-Hall
For kite manufacturers : Mr. Gulzar Muhammad Chaudhry,
Association Engineer.
Public Member : Mr. Muhammad Anwer Sheikh.
Date of hearing : 10.02.2006.

ORDER

Learned Advocate General contended that in pursuance of directions of the Court, contained in order dated 25th October 2005, Provincial Government Punjab had promulgated Punjab Prohibition of Kite Flying Ordinance 2006 (Punjab Ordinance No.1 of 2006) [herein after referred to as "the Ordinance"]. He prayed that 15 days time be allowed under Section 4 of the Ordinance for kite flying activities in the Province of Punjab by relaxing the ban on such activities vide order dated 25th October 2005. We have gone through the contents of the Ordinance. Relevant Sections therefrom are reproduced herein below for convenience :--

"3. Cognizable and non-bailable offence:--
Notwithstanding anything contained in any other law for the time being in force, an offence under this Ordinance shall be cognizable and non-bailable and would be tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898 (Act V of 1898).

4. Offence and punishment:-- (1) No person shall :-
(a) commit or abet an act of kite flying;
(b) manufacture, sell or offer for sale a kite;
and

- (c) manufacture, store, sell or offer for sale metallic wire, nylon cord (tandi) any other thread coated with sharp maanjha or any other injurious material for the purpose of kite flying.

(2) The Nazim of the concerned District may, through a notification issued with the prior approval of the Government, allow kite flying and sale of kites for a period not exceeding fifteen days during the spring season in a year;

Provided that kite manufacturing may be allowed for such period as the Government may specify by a general or special order.

Explanation. - Nothing in this sub-section shall be construed to allow, flying of a kite with metallic wire, nylon cord (tandi) or a thread coated with sharp Maanjha, manufacturing or sale of any such injurious material for the purpose of kite flying.

(3) Subject to sub-section (2), a person who contravenes the provision of sub-section (1) shall be liable to imprisonment for a term not exceeding three years or to fine not exceeding forty thousand rupees or to both.

4-A. Registration. - (1) Every manufacturer, trader or seller of kites or kite flying material shall get himself registered with the concerned City District Government or the District Government in the manner as may be prescribed by the Government through a notification.

(2) A person, who contravenes the provision of sub-section (1), shall be liable to imprisonment for a term not exceeding six months or to fine not exceeding forty thousand rupees or to both."

A perusal of above Sections indicates that sale of metallic wire, nylon cord (tandi) or any other thread coated with "sharp Maanjha" or any other injurious material for the purpose of kite flying has been banned. Section 2(e) of the Ordinance defines "Sharp Maanjha" as under:-

"sharp maanjha" means a mixture of chemicals and grinded glass or any other injurious and dangerous material coated on thread for the purpose of kite flying."

It may be noted that "thread" coated with "sharp Maanjha" is a special twine, prepared with paste made from eggs, white flour or boiled rice, mixed with grinded glass, colour and few other

ingredients. Flying kites with such like twine would be an offence under Section 4 of the Ordinance.

2. On the previous dates of hearing learned counsel appearing for kite manufacturers etc. explained the difficulties being faced by the workers engaged in this trade, including situation of putting them out of job because of the ban imposed by this Court on such activities. It was also explained that in absence of any law, the persons engaged in this business can claim to run the trade of manufacturing of kites and kite flying twine in terms of Article 18 of the Constitution. As now law has been promulgated which is somewhat in consonance to the order passed by this Court on 25th October 2005, therefore, subject to following conditions and strict adherence to the provisions of the Ordinance, permission of kite flying activities is allowed for 15 days, commencing

25th February 2006 to 10th March 2006 :--

- 1) The order dated 25th October 2005 passed by this Court, placing ban on kite flying activities, shall remain applicable, except for the period commencing 25th February 2006 to 10th March 2006.
- 2) Before the commencement of above period of 15 days, every manufacturer/trader shall get himself registered in accordance with the provisions of Section 4-A of the Ordinance. No one, except the registered manufacturers/traders, etc. shall be allowed to enter into the trade of manufacturing/ trade of kites or kite flying material.

- 3) The shopkeepers, interested in the business of kites and kite flying material, shall obtain permission through licence from the Registration Authority and on the following day of expiry of above period of 15 days i.e. on 11th March 2006, kites and kite flying material shall not be sold by them, otherwise, they would be liable for the contravention of the directions of this Court.
- 4) Kite flying activity with nylon cord (tandi), metallic wire and "thread" quoted with "sharp Maanjha" (as it has been explained herein above) shall remain prohibited during the period of relaxation of ban.
- 5) The manufacturers/traders of kites and kite flying material shall not be allowed to consume four weeks time provided to them vide notification No. SOV(LG)-5-10/2003 (P) and they shall be allowed to do such activity during the period of 15 days commencing from 25th February 2006 to 10th March 2006. Notification issued in this behalf, is hereby suspended only to extent of allowing four weeks time period to the traders/manufacturers and to manufacture kites and kite flying material.
- 6) The Nazims all over the Province of Punjab and in other Provinces shall celebrate "Jashan-e-Baharan" on one date, with the approval of their respective Governments. Celebration of such function on different dates in different Districts shall not be permitted because if such practice is allowed, then there would be such activity

throughout the year in all the Provinces, which is not in the interest of justice.

- 7) The offence under Section 4 of the Ordinance is summarily triable by the Magistrate, therefore Provincial Government, to have effective check and to avoid violation of the Ordinance and order of this Court, may confer special Magisterial powers on some of its officers including the Inspectors, appointed under Section 142 of the Punjab Local Government Ordinance 2001, by allocating different areas to them.
- 8) The Inspector Generals of Police, Deputy Inspector Generals of Police, District Nazims, Council/ Tehsil/ Town Nazims shall be directly responsible for the implementation of the provisions of Ordinance as well as this order and in case of any violation they will also be held liable for action, accordingly.
- 9) The Inspector Generals of Police shall transmit daily situation report to the Registrar of this Court, about the incidents, if any, took place, during the period of 15 days commencing 25th February 2006 to 10th March 2006, enabling the Court to review the instant order or suspend the operation of the Ordinance, if glaring violations falling within the mischief of different provisions of the Ordinance are being committed.

3. Mr. Shahid Hamid, learned Sr. ASC, who appeared as amicus curie, made certain suggestions for implementation of the

Ordinance in letter and spirit. He is directed to handover the same to the Government of Punjab through the Advocate General Punjab for consideration.

4. It may also be clarified that after completion of the period of fifteen days, allowed herein above for the kite flying activities, from 11th March 2006 to onward there shall be complete ban and violation of the same shall be checked by the Police authorities of the Province. They would ensure that order of prohibiting kite flying activities is fully enforced.

5. With regard to treatment of Fahim Shahzad, learned Advocate General Punjab stated that the Government of Punjab (Health Department) has obtained an opinion from a Hospital abroad and is ready to bear expenditure for his treatment over there. In this behalf, he has placed on record a report received from one of the Hospitals from Ireland. Mr. M. Ilyas Khan, learned Sr. ASC appeared and stated that he could also contact with doctors in Wales, as his younger brother is working as Senior Consultant Surgeon over there. He stated that on receipt of the report, he would transmit the same to the Government of Punjab through the office of Advocate General. In such view of the matter, he is allowed to obtain an opinion on the basis of documents, which shall be sent to the said Hospital by him and whatever opinion is received from the said Hospital, the same shall be sent to the Government of Punjab through the Advocate General. In the meantime, the Health Department and other concerned quarters shall decide to make necessary arrangements for sending Fahim Shahzad abroad alongwith one attendant for treatment.

6. In the matter of Abdullah Umar, learned Advocate General Punjab stated that doctors are examining his case and the Government of Punjab is ready to provide necessary assistance, whatever is possible, to them and in this behalf report shall be submitted on the next date of hearing.

Case is adjourned to 17th March 2006 for the purpose of further hearing and examining the reports received in this behalf.

Lahore,
10.02.2006.
Irshad /*

31

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 Faqir Muhammad Khokhar
Mr. Justice Raja Fayyaz Ahmed
Mr. Justice Ch. Ijaz Ahmad

SUO MOTU PETITION NO.11 OF 2005

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

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

& **CMA 1771 TO 1846-L/2005** (Liaquat Ali s/o Barkat Ali & 75 others)

& **CMA 1867 TO 1875-L/2005** (Bano Bibi widow of Sain Lal Din & 8 others)

& **CONSTITUTION PETITION No.2 of 2006**

For the Govt. of Punjab : Mr. Aftab Iqbal Chaudhry, AG. (Pb)
Mr. Khalid Farooq, CCPO Lahore.
Mr. Saleem Sikandar, AIG, Police (Pb).
Mr. Abid Saeed, Dy. Secy: Litigation.
Mr. Ejaz Farrukh,
Sr. Law Officer Health Deptt.
Mr. Maqbool Ahmed Malik,
S.O. Information Deptt. Punjab.

For Attorney General : Dr. Danishwar Malik, Dy. A.G.

For the Govt. of Balochistan: Malik Sultan Mehmood AAG.

For the Govt. of NWFP. : Mr. Muhammad Saeed, Addl: AG NWFP
Mr. Mehmood A. Qureshi, AOR.

For the Govt. of Sindh : Nemo.

For I.G. Islamabad : Mr. Muhammad Nawaz Jorra, DSP.

As Amicus Curie : Mr. Shahid Hamid, Sr. ASC
Ch. Aitezaz Ahsan, ASC.
Dr. Farooq Hassan, Sr. ASC.

For WAPDA/LESCO : Mr. M. Akram Arain,
Chairman LESCO.

For the Victims. : Mr. M. Akram Sh. Sr. ASC (Absent)
Muhammad Fahim Shahzad
through his father.

For Kite Dealers/Manuf.: Malik M. Qayyum, Sr. ASC.

Mr. A. H. Masud, AOR.

For Kite Dealers Faisalabad: Mr. M. Afzal Sindhu, ASC.

For Agriculturist/Cultivators: Ch. Muhammad Ashraf, ASC. (Absent).

For K.B. Traders/Kite Sellers: Mr. S. M. Masud, ASC.
Mr. Mahmoodul Islam, AOR

Another counsel : Mr. M. Ilyas Khan, Sr. ASC. (Absent)

For Qafla Tanzeem : Mr. Liaqat Qureshi, ASC

For Chief Editor : Mr. Khalid Mehmood. (Absent)
Daily Soorat-e-Hall

For manufacturers : Mr. Gulzar Muhammad Chaudhry,
Association Engineer. (Absent)

Public Member : Mr. Muhammad Anwer Sheikh. (Absent)

Date of hearing : 17.03.2006.

ORDER

Constitution Petition No. 2 of 2006.- As we have already initiated proceedings against dangerous kite flying activities, therefore, petition is entertained in the public interest. Notice to respondents as well as Advocate General (Punjab) be issued. To be fixed alongwith connected matters.

2. **SUO MOTU PETITION NO.11 OF 2005.**- On the last date of hearing, in pursuance of Punjab Prohibition of Kite Flying Ordinance 2006 (Punjab Ordinance No.1 of 2006) [herein after referred to as "the Ordinance"], promulgated by the Provincial Government, ban was lifted in relaxation of the order dated 25th October 2005. It is reported in the media that number of incidents had taken place, resulting in deaths of innocent children and adult persons due to incision of twine on their throats. Advocate General Punjab stated that cases have been registered in respect of the incidents. On our query he stated that so far Government of Punjab has not decided about the payment of

“Diyat” to the heirs of the deceased, who died due to incision of twine on their throats, particularly those who were not kite flyers but met with untoward incident, either on the motorcycle or otherwise. It would be appreciated if the Advocate General, after collecting necessary data, approach the Government to work out the Diyat amount, which is required to be paid, because, prima facie, we are of the opinion that it is now the State’s duty to compensate them.

3. Learned Advocate General requested that one month’s time be granted to take up the matter of payment of Diyat with the Government. Request is allowed. As the period of 15 days, allowed for kite flying activities in pursuance of the Ordinance, is over, therefore, the order dated 25th October 2005 is restored as a result whereof, now there shall be a complete ban on all kite flying activities, throughout the country. Respective Inspector Generals of Police and all other law enforcement agencies including Nazims, Councilors, etc. are required to implement the same in their respective jurisdictions. They will ensure that no person is allowed to deal in the business of manufacturing or selling of kites or kite flying material and if there is any violation, they would be personally responsible for violation and shall be proceeded against, respectively.

4. We also appreciate the gesture, shown by the LESCO by complying with the order of this Court, as one of the boys, who had sustained injuries namely Wasim Shehzad son of Muhammad Yasin has been provided employment in BPS-5. Learned Advocate General Punjab informed that the Government is also taking steps

for providing treatment to Fahim Shehzad. He is directed to submit report in this behalf on the next date of hearing.

5. Mr. Shahid Hamid learned Sr. ASC has placed on record a statement indicating the losses sustained by the LESCO during the relaxation period of ban on kite flying activities, which is 1187% high than the period during which the ban was imposed.

6. Ch. Aitezaz Ahsan, ASC appeared as amicus curie and placed on record certain suggestions. Copy of the same has been provided to Advocate General Punjab and to all other Advocates appearing in this matter.

7. Dr. Farooq A. Hassan, ASC appeared and stated that he will assist the Court on the next date of hearing by providing material on the subject. He is allowed to do so.

Case is adjourned to 26th May 2006 for further hearing.

Lahore,
17.03.2006.
Irshad /*

25

IN THE SUPREME COURT OF PAKISTAN
(Suo Motu Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.

Civil Misc. Application No. 609-L/2006 in
SUO MOTU PETITION NO. 11 OF 2005

(Loss of Lives of Innocent Children due to kite flying)

Attendance :--

Mr. Aftab Iqbal Chaudhry, Advocate General Punjab.

Date of hearing : 18.03.2006.

ORDER

Learned Advocate General (Punjab) has filed instant application, seeking clarification/amendment in the order of this Court dated 17th March 2006. Relevant paras therefrom are reproduced herein below:---

“3. That in response to the query, the undersigned categorically stated that Government of the Punjab had not yet taken any policy decision for payment of the compensation in that behalf, whereupon this Hon’ble Court, while expressing its prima facie opinion with respect to the responsibility of a welfare State to pay compensation in such cases, directed the undersigned to approach the Government to finalize its policy decisions for the payment of the compensation in such cases.

4. That the undersigned thereupon requested this Hon’ble Court for grant of one month’s time to enable him to convey the esteemed observation to the Government of the Punjab so that some policy decision is taken thereon.

5. That although the undersigned had never used the word “Diyat” in his statement and address with regard to the aforementioned subject, yet perhaps due to some inadvertence, the word “Diyat” has been used in the venerated order referred to above instead of that of compensation in paras 2 and 3 thereof.

2. Learned Advocate General contended that in terms of provisions of law "Diyat" is required to be paid only by the accused to the heirs of deceased, whereas the Government of Punjab being welfare State is contemplating to compensate the heirs of the deceased, who died on account of incision of twine, coated with sharp Maanjha, on their throats, therefore, necessary clarification/amendment be made in this behalf in the order dated 17th March 2006.

3. After hearing learned Advocate General (Punjab) and having gone through the relevant facts and law on the subject, it is considered necessary to clarify/amend the order dated 17th March 2006 to the effect that the Advocate General had not said in respect of payment of "Diyat" as it required to be paid by the accused to the heirs of the deceased and the word "Diyat" has been used in the order in the context of, "compensation" to be paid to the heirs of deceased who died on account of incision of twine, coated with sharp Maanjha, on their throats. Therefore, the word "Diyat" used in the order dated 17th March 2006 may be construed as compensation to the heirs of the deceased by the Government and not as blood money.

The Bench, after having taken into consideration the application, has agreed to issue above clarification.

Lahore,
18.03.2006.
Irshad/*

26

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Abdul Hameed Dogar
Mr. Justice Saiyed Saeed Ashhad

Suo Moto Case No.11 of 2005

(Loss of Lives of Innocent Children Due to Kite Flying)

Attendance:

Ms. Naeeda Mehboob Elahi, DAG
Mr. Abdul Rahim Mengal, AAG Balochistan
Haji M. A. Qayyum Mazhar, ASC on behalf of Govt. of NWFP
Mr. Khadim Hussain Qaiser, Addl. AG. Punjab
Dr. Qazi Khalid Ali, Addl. A.G. Sindh.
Mr. Ejaz Farrukh, Sr. Law officer, Health Department Punjab
Mr. Abid Saeed, Deputy Secretary, Information Dept. Punjab
Mr. Muhammad Nawaz Jora, DSP Legal (on behalf of I.G. Islamabad)
Syed Mubashar Masood, Director (legal) LESCO

Date of hearing: 5.6.2006


ORDER

Learned Advocate Generals on behalf of respective Provinces are directed to submit reports relating to the compliance of the order dated 25th October, 2005 before the next date of hearing.

Adjourned to a date in office **after three weeks.**

Islamabad, the
5th June, 2006.

Nisar/*


8/6

25

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ

Suo Moto Case No. 11 of 2005 (In Chamber)

(Loss of lives of innocent children due to kite flying)

Attendance:

Mr. Aftab Iqbal Chaudhry, Advocate General Punjab

Date of hearing: 19.6.2006

ORDER

Learned Advocate General Punjab appeared in response to notice on application, wherein incident of killing of a minor was reported, and stated that I.G. Police had again issued directions to all his subordinates (officers/officials) to implement the order of this Court in letter and spirit. He further stated that due to such directions a good number of *dore* manufacturers have abandoned the job and except few one, who are dealing in *Muhallahs* are selling the *dores* due to which incidents of killing are happening. He further stated that in some of the cases the kite flyers had themselves stored dangerous *Manjhas* which they use oftenly due to which untoward incidents are happening. He assured that the matter shall again be considered seriously and I.G. Police will take all necessary measures for the purpose of controlling kite flying with the dangerous *Manjha* etc.

2 He may submit a comprehensive report in this behalf before the next date of hearing.

Date in office.

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.

C.M.A. No.1345 of 2006

in

Suo Moto Case No.11 of 2005 (In Chamber)
(Loss of lives of innocent children due to kite flying)

Attendance:

Ms. Naheeda Mehboob Elahi, DAG

Mr. Khadim Hussain Qaiser Addl. Advocate General Pb.

Date of hearing. 30.11.2006.

ORDER.

Learned Additional Advocate General requests for some time
to procure the parawise comments from concerned quarters.
Adjourned to 7th December, 2006.

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.

C.M.A NO. 1345 of 2006

In

Suo Moto Case No. 11 of 2005 (In Chamber)

(Loss of lives of innocent children due to kite flying)

Attendance:

Ms. Naheeda Mehboob Elahi, DAQ

Mr. Khadim Hussain Qaiser Addl. Advocate Gen. Pb.

Mr. Imram Ahmer S.P Operation.

Date of hearing. 7.12.2006.

ORDER

It is informed by Additional. Advocate General that number of effective steps have been taken to ensure the order of this court to be implemented in letter and spirit and complete ban is placed on the kite flying with the "Danger Mangas". Efforts being taken by Mr. Aamir Zulfiqar DIG and his team are appreciable however, they are directed to keep it up and they shall be submitting monthly report for perusal in chambers.

Dispose of.

This case may be transferred to Islamabad and be fixed on 5th June, 2006. Issue notice to all concerned. Inspector Generals, Police of all the Provinces be also directed to submit a comprehensive report as to whether any untoward incident had taken place, if so, what steps had been taken by them to implement the directions of the Court.

May be sent to A.R. Ls as
Kite Flying case is flying there.

20.5.06

SUPREME COURT OF PAKISTAN

BRANCH REGISTRY, LAHORE

NOTICE

It is notified for information of all concerned Advocates/Advocate-on-Record that cases fixed in the Final Cause List No. 5-L/2006 Before Bench-No. I, II and III at Lahore w.c.f. 22-05-2006 to 26-05-2006 stand cancelled and de-listed due to non-availability of the Benches during the said period.

Lahore, the 19th May, 2006

(MUHAMMAD BASHIR JANJUA)
ASSISTANT REGIASTRAR

Copy to DR (J) for information

2. Orders are also submitted for kite flying case which is to be fixed for hearing on 26.5.06 - Notices issued.

H.C.J.

19/5/06

IN THE SUPREME COURT OF PAKISTAN.

ORDER SHEET

Civil Misc. Application No.	406	of	2006
	IN		
Suo Motu Case No.	11	of	2005

(Lost of lives of innocent children due to kite flying)

DATE OF ORDER	ORDER OF CHIEF JUSTICE.
----------------------	--------------------------------

02-03-2006	Mr. Aftab Iqbal Chaudhry, AG (Pb)
------------	-----------------------------------

.....

Learned Advocate General (Pb) contended in support of application that on account of engagement of Punjab Police to control Law and Order position to provide protection to the persons and properties during rallies against the publication of blasphemous sketches, the Government as well as the private persons engaged in kite flying industry could not avail the period fixed by this Court with effect from 25th February to 10th March 2006 whereas in some of the Districts of the Province of Punjab, on account of same reasons had not issued notification for celebration of Jashan-e-Baharan for 4/5 March 2006 in pursuance of earlier order dated 10th February 2006.

2. He further contended that in fact 15 days had not been allowed to the Government because kite flying activities were ordered to be closed on 10th March 2006 i.e. on 14th day. It is also contended by him that the Government of Pakistan earns a considerable amount of Foreign Exchange during the period of Jashan-e-Baharan as number of guests travel from outside the country of Pakistan. More over it would not be possible for the persons engaged in the kite flying industry to clear their stock during these days, therefore, he stated that permission be accorded to Government of Punjab to extend the period of kite

flying activities upto 15th March 2006. Meanwhile a notification will be issued for the purpose of celebration of Jashan-e-Baharan in one of these days for whole Province of Punjab.

3. It may be noted that in the Media number of reports have published that law enforcing agencies have failed to control the kite flying activities with sharp 'Manjhaa' which has resulted in death of two persons. In this behalf explanations have been called for from the concerned quarters. However, through AG(Pb) once again it is made clear to all concern^{ed} that earlier order as well as instant order must be implemented in letter and spirit and the persons responsible for the violation be proceeded against accordingly.

4. Keeping in view the request made by learned Advocate General (Pb) on behalf of the Punjab Government, subject to all just exceptions the period of kite flying activities is fixed from 1st March to 15th March 2006 with direction to the Government of Punjab to conclude the celebrations of Jashan-e-Baharan within stipulated period and with effect from 16th March 2006 there will be complete ban on kite flying activities as it was imposed on 25th October 2005. The Inspector General of Police (Pb) and other concerned authorities are directed to send reports as it has been ordered earlier.

Application stands disposed of in above terms.

23

63

SUPREME COURT OF PAKISTAN, LAHORE.

dated 25-10-05

The short order/in original passed in SUO MOTU
Petition No.11 of 2005 is being sent which may be
delivered for its implementation in the office at Islamabad
alongwith the original file which is already with you.

A.R.(L)
28-10-05

This refers to Sno Memo Case No. 11 of 2005.

2. One has read reports in the Press regarding large losses being caused to the equipment & installation of WAPDA because of dangerous kite flying activities which is a loss, in fact, to the public Exchequer which in turn causes colossal losses to the domestic consumers and others on account of frequent tripping of electricity.
3. Therefore, I would propose that a notice be also issued to the Chairman of WAPDA to defame the concerned Member of WAPDA to appear in this matter, alongside record, to state about the damage accruing to WAPDA and its consumers in the last ten years.

HJS) 2/10/05

H.C. J.

65

This petition be treated under Section 184(3) of the Islamic Republic of Pakistan. Issue notice to Chief Secretary and Advocate General Punjab with the direction to file parawise comments with regard to the incident which accrued during kite flying, as a result whereof so many people including children have lost their lives. He should state as to whether for such activities preventive measures have been adopted by the Government?

At the cost of the Provincial Government, through Information Department publication be made in different news papers inviting views of general public in this behalf.

Fix it in Court for hearing on 6th October, 2005.

Registrar

29/10

FACT SHEET FOR EXAMINATION OF HUMAN RIGHTS CASES

HRC No. 459/2009

APPLICATION BY: Gazi Muhammad Baksh & News Clipping "Daily Jang" dated 16.03.2009

PROBLEM:

Applicant has attached copy of news clipping published in daily Jang, Lahore dated 16.03.2009 mentioning the casualties caused by Kite Flying (Basant) festival. It is mentioned in the news clipping that 5 people including 2 children lost their lives and 300 injured. He has prayed for imposition of ban on Kite Flying.

REMARKS:

Submitted for orders.

6/4/09

DHR

HcJ

Put up on Judicial file already pending for decision.

137/4

میان کارپوریشن کھوانہ بازار

0333-8962431
0300-7611476
041-2612937

MEMBER:- SIR SYED MEMORIAL SOCIETY ISLAMABAD.
MEMBER:- HIJAZ HOSPITAL-LHR. (Under Supervision) HIJAZ WELFARE SOCIETY.

20/3/09

Dated:

عنوان: انسانی بہمدردی کے ناطے درد مندی کی اپیل

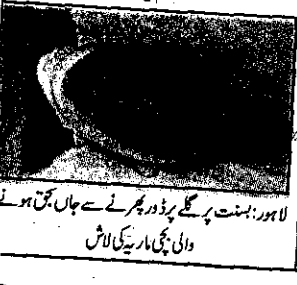


اسلام علیکم وحسبہ اللہ
میلے بھی آپ نے میری سی اپیل پر بینگ بازی پر پابندی لگے
انسانی جانوں کے قتل کو روکا تھا لیکن سماج دشمن عناصر
لامانویت سے باز نہیں آئے میرے خیال اور کیفیوں کے مطابق
آپ کے پاس اس کا حل ہے آپ کی فہمیت اندس میں سارا
نامہ جنگ کا مورخہ کا شمار صحت 2009ء کا اخبار
نمائندہ لفظ بند ہے ملاحظہ فرمائیں یہ مقبول کہاں جائے

کیس سے جا کر داد فرماد کریں۔ انسانی بہمدردی کے ناطے درد مندی کے ساتھ اپیل کرنا ہوں خدا کا
دوستک اس خونیں بیوی کو روکیں۔ پاکستان زندہ باد دعا گو و فریاد طلب
غازی محمد بخشین

ہلاکیتیں بنتی ہیں 3 جان بحق 300 خیر سزا فائرنگ

لاہور (کرائم رپورٹر) کرائم رپورٹرز نے خصوصی نامہ نگارہ
جزل رپورٹر + نیوز رپورٹر + ایجنسیاں) پنجاب حکومت کی
طرف سے ہلاکت کی اجازت لے لاہور میں تین گھنٹوں کے
قرب افراد جس میں زیادہ تر تعداد بچوں کی ہے، زخمی ہوئے
تفصیلات کے مطابق قبائل پڑھنے لکھنے والی کارکنان
الہیہ کی ضد پر اپنی اہلیہ اور 6 سالہ بیٹی مارنے کے کوشش
پر رشتہ داروں نے شہداء جا رہا تھا کہ پھر کے علاقہ
چنگ کی ڈور صوم بیٹی مارنے کی گردن پر پھر گئی جس کے
بارہ خوں میں ات پت ہو کر اپنے باپ کی گود میں جا کر
قوسی ہسپتال لے جایا گیا جہاں وہ دم توڑ گئی۔ براہ راست
عام کا 6 سالہ بیٹا زین حجت پر کمر اتھا کہ مسلم سوس
آئے والی اندی گولی سر پر لگنے سے شدید زخمی ہو گیا۔
یہ ہسپتال لے جایا گیا جہاں وہ دم توڑ گیا۔ حاجی پورہ شہید
میں 14 سالہ عرشہ شکت حجت پر کمر اٹھنگ بازی کر رہا تھا
چنگ پکارتے ہوئے عرشہ شکت حجت سے گل میں جا کر
شہید زخمی ہو گیا اسے ہسپتال لے جایا گیا جہاں وہ دم
چنگ بازی کرتے ہوئے خلف واقعات ڈور پر
حجت سے کرنے، چنگ پکارتے گاؤں میں کی زد میں آ
لاہور سے 300 کے قریب افراد زخمی ہو گئے۔ زخمی
داؤں میں زیادہ تر بچے شامل ہیں جنہیں شہ کے مختلف
میں داخل کر دیا گیا ہے۔ ہلاکت کے باعث ہلاک
داؤں کے لواحقین نے ان احوالات کا شدید دکھ اور غم



لاہور: ہلاکت کے روز فائرنگ سے جاں بحق ہونے والی بیٹی مارنے کی لاش



لاہور: ہلاکت کے روز فائرنگ سے جاں بحق ہونے والے زین کی والدہ میت پر تین گھنٹوں کے

لاہور: ہلاکت کے روز فائرنگ سے جاں بحق ہونے والی بیٹی مارنے کی لاش
لاہور: ہلاکت کے روز فائرنگ سے جاں بحق ہونے والے زین کی والدہ میت پر تین گھنٹوں کے
ہلاکت کے روز فائرنگ سے جاں بحق ہونے والی بیٹی مارنے کی لاش
ہلاکت کے روز فائرنگ سے جاں بحق ہونے والے زین کی والدہ میت پر تین گھنٹوں کے

The Chief Secretary, Government of Punjab in his letter dated 29th September 2005 has disclosed that except publicizing the action, initiated on the recommendations of the one man Tribunal, it has not been deemed appropriate to disclose the contents of the inquiry report submitted by the one man Tribunal and Police to the public.

2. Copy of the report of one man Tribunal i.e. District & Sessions Judge, Faisalabad, has been procured. The same may be kept in sealed cover and it may not be made available to any one for perusal. However, no such reservation can be expressed in respect of report submitted by two members of Police Force being administrative in nature, as Inspector General of Police (Punjab) has constituted a committee on perusal of the press clipping in the newspapers, as it is evident from his letter No. 4074-76/PSO dated 30th August 2005. This Court had also directed the Inspector General of Police (Punjab) to send a comprehensive report of the incident vide order dated 31st August 2005.

3. Meanwhile, petition filed on behalf of Mst. Sonia, under Article 184(3) of the Constitution of Islamic Republic of Pakistan, Naz, may also be registered, subject to its maintainability and it be fixed alongwith Suo Motu notice in Court on 10th October 2005.

4. Attorney General for Pakistan and Advocate General (Punjab) be asked to appear and assist the Court.

5. Notice be issued to petitioner Mst. Sonia Naz through her counsel Mr. Zulfiqar Ahmed Bhutta, ASC, Abdullah Khalid, Superintendent of Police and Jamshed Iqbal Chishti, Inspector of Police through Inspector General of Police (Punjab), to appear before the Court on the above said date of hearing.

6. Inspector General of Police is required to supply six complete sets of the inquiry report for Court purposes, besides, providing copies of the same to all others to whom notices have been issued, well before time. Office is directed to communicate this order to him through fax. Copy of this order be also sent to Chief Secretary, Government of Punjab.

Justice
(IFTIKHAR MUHAMMAD CHAUDHRY)
Chief Justice of Pakistan
Dated: 06.10.2005.

REGISTRAR

6/10

Ref: Application of Mr. Zulfiqar Ahmed Bhutta, ASC.

The Chief Secretary and the Inspector General of Police (Punjab) are directed to send a comprehensive report of the incident within ten days without fail.

Justice
(IFTIKHAR MUHAMMAD CHAUDHRUY)
Chief Justice of Pakistan.
Dated: 31.08.2005.

REGISTRAR

31/8

(A) Counsel appears to be directed to
 Subject, Enquiry report on
 Carpenter Enquiry by D/S Suraj Fort
 In the main while police department
 also Carpenter Enquiry report to
 (B) What copy sent to what
 report so far if not what is the
 reason?

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