

any interference, which is approved by dismissing this appeal |C
in limine.

MH/A-100/L

Appeal dismissed.

2020 C L C 797

[Sindh]

Before Muhammad Ali Mazhar and Agha Faisal, JJ

PUBLIC INTEREST LAW ASSOCIATION OF
PAKISTAN (PILAP) through
Authorised attorney----Petitioner

versus

FEDERATION OF PAKISTAN and 2 others----Respondents

C.P. No.D-977 of 2019, decided on 11th December, 2019.

Pakistan Airports Security Force Act (LXXVII of 1975)---

---S.6---Equipment, procurement of--- Powers and duties of Airport Security Force (ASF)---Petitioner was aggrieved of use of locally manufactured explosive detection devices by Airport Security Force (ASF)--- Validity---Airport Security Force was responsible to maintain and provide foolproof security and to take all best possible measures which they had already undertaken to provide---Providing new equipment or state-of-art detective machines/equipment was responsibility of Civil Aviation Authority--- High Court directed ASF to maintain foolproof safety and security at all airports, aerodromes, aircraft and civil aviation installations and also to safeguard civil aviation against acts of unlawful interference in accordance with provisions of S. 6 of Pakistan Airports Security Force Act, 1975---High Court also directed Director-General Civil Aviation Authority and Director-General ASF to convene high profile meeting to revisit security measures in larger public interest and in case further endeavors/measures were required---Constitutional petition was disposed of accordingly. [p. 802] A

Abdul Moiz Jafferri for Petitioner.

Kafeel Ahmed Abbasi, D.A.G.

Sarfaraz Ahmed, Assistant Director (Legal), A.S.F.

Date of hearing: 11th December, 2019.

ORDER

MUHAMMAD ALI MAZHAR, J.----This petition has been brought to entreat a declaration that use and manufacturing of "Khoji" bomb detector modeled on the ADE 651 by the respondent No.2 is illegal. The petitioner has also prayed for restraining order against the respondents Nos.2 and 3 from licensing, manufacturing and using "Khoji" bomb detector.

2. The transient facts manifests from memo. of petition are that the petitioner is a NGO and the purpose of filing this petition is to draw attention of this court to a scam orchestrated by a British national who was involved in assembling and using of fraudulent bomb detectors which allegedly affected our country in dealing with its security measures. The said detectors were manufactured by a British company under the name and style of ADE 651 which acclaims that their device could effectively detect the presence and location of various types of explosives from long range. It is further alleged that Pakistan purchased ADE-651 detectors for the use of respondent No.2 (ASF). It is further contented despite banning the export of ADE-651 by the British Government, the respondent took over the making and selling of this device under the brand name "Khoji".

3. The learned counsel for the petitioner argued that the respondents No.2 is responsible for regulating security for all airports and to safeguard general public but they have failed to comply with or implement the provisions of Airports Security Force Act, 1975. The respondents Nos.2 and 3 have failed to act in the interests of larger public interest and are using fake bomb detectors which is sheer infringement of fundamental rights of citizens of Pakistan enshrined under Article 9 of the Constitution of Islamic Republic of Pakistan. He concluded that the use of fraudulent bomb detector should be put to rest by restraining its licensing, manufacturing and usage in Pakistan.

4. The respondent No.2 filed their comments in which it is narrated that the Airports Security Force (ASF) has been constituted under Section 3 of Airports Security Force Act, 1975 for ensuring security of all aerodromes, airports, aircrafts, civil aviation installations, passengers, baggage etc. and safeguarding the civil aviation against act of unlawful interference or threats of such interference and for the maintenance of law and order within the limits of airports and aerodromes.

5. The learned D.A.G. argued that under Section 6 of the aforesaid Act, Airport Security Force is responsible to take effective measures for ensuring security of airports. The officers and members of the Airport Security Force are subject to Pakistan Army Act for disciplinary

purposes. While relying on the comments of the respondent No.2, the learned D.A.G. further argued with the assistance of Assistant Director (Legal), ASF that ASF neither procured explosive detector ADE-651 nor manufactured, used or sold out. He further argued that in 2008- 2009, ASF procured Sniffex explosive detector which was very costly, therefore, the ASF with the help of EME Engineers developed its own explosive detector known as "KHOJI" which is being used at the car parking gates for scanning of vehicles. It was further contended that this device KHOJI was developed by Army engineer as alternate technology for detection of explosive and arms/ammunition, whereas the imported explosive detector Sniffex was found less effective in detection of explosive. It was further avowed that performance of KHOJI explosive detector is well authenticated in recovery of arms/ammunition and explosive which detected thousands of ammunition and hundreds of arms at main entrance of different airports. The Armed Forces and Government Law Enforcement Agencies are also using KHOJI. The aim of development of KHOJI was to adopt effective measures for security of airports and to save public money due to resources constraints and non-availability of latest and authentic explosive detectors. The learned D.A.G. further argued that this petition has been filed merely on presumptions with baseless allegations, whereas banned explosive detector ADE-651 was never procured by ASF.

6. Heard the arguments. The powers and duties of officers and members of the ASF are provided under Section 6 of Airports Security Force Act, 1975. For the ease of reference, Section 6 of ASF Act is reproduced as under:

"6. Powers and duties of officers and members—(1) An officer or member shall—

- (a) take effective measures for ensuring security of all airports, aerodromes, aircraft and civil aviation installations, [within the limits of airports and aerodromes] and for safeguarding civil aviation against acts of unlawful interference;
- (b) safeguard aircraft passengers, baggage, cargo and mail within the limits of aerodromes and airports;
- (c) prevent unauthorized persons and vehicles from access to the airside or other areas important to the security of the aerodromes or airports;
- (d) require the operations of aircrafts registered in Pakistan to conform to the prescribed civil aviation security requirements;

- (e) take effective measures for preventing, hijacking, sabotage, placement of car bombs, letter bombs, and dangerous articles and carriage of arms and ammunition into the restricted areas of the airports, aerodromes and aircraft except as authorized by him and shall as soon as he detects any contraband on the person or in the baggage of any person checked by him notify it to the Customs staff available at the airports or aerodrome for appropriate action under the Customs Act, 1969 (IV of 1969);
- (f) use such arms and ammunition and equipment as may be authorized by the Force Commander [or an officer authorized by him] for the purposes of this Act;
- (g) search and arrest without warrant any person whom he suspects of endangering, or attempting to endanger, or having endangered, the safety of an aerodrome or airport or an aircraft or civil aviation installation and may use such force as may be necessary in the discharge of his duties aforesaid; and
- (h) perform such other functions as the competent authority may require him to perform.

(1-A) The Force Commander may, with the previous approval of the Federal Government call for military assistance in connection with post-landing and anti-hijacking operations at an airport or aerodrome, and when he does so, all officers and members and civil agencies operating at the airport or aerodrome shall function in accordance with the directions of the military authority rendering such assistance.

(2) An officer, for the purpose of this Act, shall exercise, within the areas in which this Act apply all the powers conferred on an officer incharge of a police station under the Police Act, 1861 (V of 1861) and the Code of Criminal Procedure, 1898 (Act V of 1899)."

7. The respondent No.2 and respondent No.3 have filed their comments and we have noted that similar pleas have been taken by them in their reply. In the concluding paragraph, ASF has mentioned as under:

"1. It is humbly prayed that:-

- a. Explosive detector ADE-651, neither procured, manufactured, used nor sold out.

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- b. In 2008-2009, ASF procured 15 x Explosive Detector SNIFFEX, however due to sharp increase in cost of said procured SNIFFEX and non-availability of latest detector as well as financial constraint, therefore ASF with the help of EME Engineers, developed its own explosive detector i.e. KHOJI, which is helpful in detection of arms and ammunition and recovered thousands of live ammunition and hundreds of weapons, till the date at different airports.
 - c. Considering positive result, Defence Forces (i.e. Army, Navy, PAF and Law Enforcement Agencies) demanded said KHOJI, which were provided, accordingly, on no loss/profit basis.
 - d. Armed Forces as well as Law Enforcement Agencies, being using KHOJI, never complained regarding its unsatisfaction.
 - e. The petitioner's objection is without plausible reason and based on pretext of banned explosive detector ADE-651, reflects his nefarious design and seems provisioning of safe passage to anti-state elements.
 - f. Under Section 6 of ASF Act, 1975, ASF is responsible for effective measures to ensure security of airports, safeguarding aviation industry within limit of airports, hence adopted extra measures, for strengthen security of airports.
 - g. ASF never compromise on single means of security, whereas KHOJI is being used as additional source of security.
 - h. Petitioner has no knowledge of security, technical or scientific education/ experience, but merely objected on KHOJI on plea of ADE-651, to interfere in security performance of State Forces.
 - i. The petitioner malafidely filed this petition to ban KHOJI, which mightily resulted to loophole in security and provide safe passage to terrorist as well as demand for importing such detector on high prices, will caused serious financial loss to exchequer.
2. Considering aforesaid factual position, it is humbly requested that the petition may be dismissed with cost, being

based on presumption, leveled baseless allegation, whereas banned explosive ADE-651, was never procured by ASF. However, if the Honourable Court deems it necessary to replace the KHOJI, CAA (responsible for provision of equipment to ASF) may be directed to provide latest and state of art alternative device detection to ASF in place of KHOJI, please."

8. Though the ASF is confident with regard to performance of KHOJI but it is further stated that the Civil Aviation Authority is responsible for provision of equipment to ASF, so if this court deems it necessary to replace the KHOJI, the CAA which is responsible for provision of equipment to ASF may be directed to provide latest and state of art alternative device for explosive detection to ASF in place of KHOJI. We have also noted that though the petitioner wants absolute ouster of KHOJI detector but no alternate solution was suggested as stopgap arrangement. When we raised this query to the learned counsel for the petitioner, he very candidly argued that the petitioner has no such technical information to provide. At the same time the reply of ASF shows that they are very much self-confident with the performance of their developed device KHOJI and they are not using any banned ADE-651 explosive detector. Rather they have very confidently quantified that neither they procured ADE-651 explosive detector nor manufactured or sold out. At the same time it is stated that the performance of their developed device KHOJI is well authenticated and they detected thousands of ammunition and hundreds of arms at main entrance of different airports and Armed Forces and Government Law Enforcement Agencies are also using the same device KHOJI. In the ASF reply, it is stated that the CAA is responsible to provide equipment and while we have seen the reply of CAA, they have in fact reproduced the same assertions that CAA is responsible for provision of equipment to ASF and they may be directed to provided latest and state of art alternative device for explosive detection to ASF in place of KHOJI. The ASF is responsible to maintain and provide foolproof security and to take all best possible measures which they have already undertaken to provide in their reply and so far as any new provision for the equipment or state of art detective machines, equipment, it is the responsibility of CAA to provide.

9. This petition is disposed of in the following terms:

- a. The respondent No.2 shall maintain foolproof safety and security at all airports, aerodromes, aircraft and civil aviation installations and also safeguard civil aviation against acts of unlawful interference in accordance with the provisions

envisioned under Section 6 with other enabling provisions of Airports Security Force Act, 1975.

- b. The Director General CAA and Director General ASF for their utmost satisfaction shall convene a high profile meeting within 15 days to revisit the security measures in the larger public interest and in case any further endeavors/measures are required to modernize and revamp the present detector "Khoji" and or some alternate or additional or any other advanced technology is required to be opted, added or preferred for improvising the safety and security measures at airports, aerodromes, aircraft and civil aviation installations/parking areas, the CAA shall make necessary arrangement for such equipment or technology for ASF.

MH/P-2/Sindh

Order accordingly.

2020 C L C 803

[Peshawar (D.I. Khan Bench)]

Before Sahibzada Asadullah, J

SAKHAWAT HUSSAIN---Petitioner

versus

Mst. RUBINA SHAHEEN and 2 others---Respondents

W.P. No.749-D of 2019, decided on 17th October, 2019.

(a) Family Courts Act (XXXV of 1964)---

---S. 5, Sched.---Suit for recovery of dower---Entries made in nikahnama---Presumption of truth---Scope---Husband contracted second marriage without first wife's consent---Claim of first wife for maintenance, dower and return of dowry articles---Wife produced nikahnama and kabin-nama which showed that the husband, at the time of nikah, had committed and agreed to transfer certain share of the suit house and give gold ornaments to the wife in lieu of dower amount---Plaintiff wife had established her case through examination of marginal witnesses of nikahnama as well as kabin-nama---Held, when the husband gave immovable property as dower and it was incorporated in the nikahnama, such property became property of the wife---Entries incorporated in the nikahnama were equated to a

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