

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) PIL no. 4/2020
(Through Video Conferencing
from Srinagar Wing)

Azra Usmail

.....Petitioner(s)

Through:- Mr. Z. A. Quereshi, Sr. Advocate with
Mr. Mian Tuffail, Advocate.
(on Video Conference from residence in
Srinagar)

Mr. Faisal Qadri, Advocate
(on Voice Call from residence in Srinagar)

v/s

Union Territory of Jammu and Kashmir

.... Respondent(s)

Through:- Mr. B. A. Dar, Sr. AAG
(on Voice Call from his residence at
Srinagar).

WP(C) PIL no. 5/2020
(Through Video Conferencing
in Jammu)

Court on its Own Motion

Ms. Monika Kohli, Amicus (on Video
Conference from her office at Jammu)

v/s

Union Territory of Jammu and Kashmir

.... Respondent(s)

Through:- Mr. Amit Gupta, AAG (on Video
Conference from his residence at Jammu)
for Govt. of UT of Jammu & Kashmir

Mr. Adarsh Sharma, Advocate
M.No. 9419135512 (on Video Conference
from his residence at Jammu).

Coram:

HON'BLE THE CHIEF JUSTICE (on Video Conference from High Court at Jammu)

HON'BLE MR RAJNESH OSWAL(on Video Conference from High Court at Jammu)

ORDER
22.04.2020

XIV. Issue of the impending Darbar Move and feasibility thereof

1 We had heard submissions on the above issue on the last date of hearing. We have additionally received three reports which also we consider hereafter.

Tentative one week salary expenditure

2. In response to the directions made in Para 42 (ii) & (iii) of our order dated 10th April 2020, a Report dated 21st April 2020 has been filed by Mr. Amit Gupta, learned AAG on behalf of the Financial Commissioner, Finance Department placing a list of 151 Departments including Public Sector Undertakings and Statutory Corporations which are all involved in the Darbar Move. The tentative seven days salary expenditure incurred by Government Departments of the Annual Darbar Move has been placed department-wise which totals a whopping amount of Rs.1158.723 lakhs.

Report of Transport Department

3. In response to the directions made in Para 42 (viii) of our order dated 10th April 2020, a Report dated 18th April 2020 has been filed by Dr. Asgar Hassan Samoon, Principal Secretary to the Government, **Transport Department** informing this court with regard to the number of vehicles involved in the Darbar Moves for transportation of records and employees and

the expenses incurred thereon. We may extract the relevant portion of the report as follows:

1. “That in pursuance to Hon’ble Court directions it is respectfully submitted that the expenditure incurred by Managing Director of J&K SRTC on account of Move TA is Rs-320000, RS: 390000, Rs : 397000 and RS: 687500/= for Annual Darbar Moves for the year 2018 and 2019. Further it is respectfully submitted that in (April 2018), 145 trucks and 57 buses were provided by J&K SRTC to various departments for transportation of records and employees, in (October 2018), 150 trucks and 37 buses were provided by J&K SRTC for transportation of records and employees, similarly in (April 2019), 152 trucks and 56 buses were provided by SRTC for transportation of records and employees and in (October 2019), 148 trucks and 34 buses were provided by J&K SRTC for transportation of records and employees. The total revenue generated by J&K SRTC for transportation of employees and records in April 2018, is RS: 5230361, in Oct 2018 is RS: 4873747, in April 2019 is RS: 5182286 and in Oct. 2019 is RS: 4822990. **Details are given below**

Detailed Head	Year & Month of Move	Expenditure in Rs.
002 Travel Expenses (Move TA)	April-2018	420000
	October-2018	390000
	April-2019	397000
	October-2019	687500
	Total	

Details of Revenue Earned

Darbar move Month	N. of vehicles deployed			Revenue Earned (Rs.)		
	Trucks	Buses	Total	Trucks	Buses	Total
April-2018	145	57	202	4370611	859750	5230361
October-2018	150	37	187	4377450	496297	4873747
April-2019	152	56	208	4506586	675700	5182286
October-2019	148	34	182	4319084	503906	4822990

4. We are further informed about the expenses incurred by the Transport Department; Transport Commissioner; State Motor Garages and the J&K SRTC on account of transportation, loading, unloading etc of records in the following terms:

- “2. That in pursuance to above mentioned directions of Hon’ble court, it is respectfully submitted that the details of expenditure incurred on account of Annual Darbar Moves of Administrative secretary **Transport** for the year 2018 and 2019 as expenditure on a/c of transportation, loading , unloading etc of records is Rs-417443/= and on account of Travel expenses (move TA) is Rs-1875000/= Details are given as under.

Detailed Head	Year & Month of Move	Expenditure in Rs.
002 Travel Expenses (Move TA)	April-2018	510000
	October-2018	390000
	April-2019	375000
	October-2019	600000
Total		1875000

Detailed Head	Year & Month of Move	Expenditure in Rs.
007- Office Expenses (Expenditure on a/c of Transportation, loading, unloading etc of Records)	April-2018	120400
	October-2018	91000
	April-2019	98000
	October-2019	108043
Total		417443

3. That it is further submitted that the expenditure incurred by **Transport Commissioner, J&K** on account of transportation, loading unloading etc of records is Rs- 424706/= and Move TA is Rs- 1465000/= for Annual Darbar Moves for the year 2018 and 2019. Details are given below.

Detailed Head	Year & Month of Move	Expenditure in Rs.
002 Travel Expenses (Move TA)	April-2018	375000
	October-2018	360000
	April-2019	255000
	October-2019	475000
Total		1465000

Detailed Head	Year & Month of Move	Expenditure in Rs.
007- Office Expenses (Expenditure on a/c of Transportation, loading, unloading etc of Records)	April-2018	90082
	October-2018	101608
	April-2019	117538
	October-2019	115478
Total		424706

4. That it is further more submitted that the expenditure incurred by Director of **State Motor Garages, J&K** on account of transportation , loading unloading etc of records is Rs- 265000/= and Move TA Rs- 17340000/= for Annual Darbar Moves for the year 2018 and 2019.

Details are given below.

Detailed Head	Year & Month of Move	Expenditure in Rs.
002 Travel Expenses (Move TA)	April-2018	3840000
	October-2018	3780000
	April-2019	3670000
	October-2019	6050000
Total		17340000

Detailed Head	Year & Month of Move	Expenditure in Rs.
007- Office Expenses (Expenditure on a/c of Transportation, loading, unloading etc of Records)	April-2018	82000
	October-2018	63000
	April-2019	58000
	October-2019	62000
Total		265000

”

Special Traffic arrangements for Darbar Move

5. In response to our directions made in Para 42(viii), we have also received a report dated 13th April 2020 from the **IGP (Traffic)** informing this court about **special arrangements (one way traffic)** for movement of the Darbar Move convoys during the years 2018 and 2019. Guidelines for the traffic arrangements dated 17th April 2018, 16th October 2018, 15th April 2019 and 11th October 2019 have been enclosed.

6. We extract some of the arrangements as directed in the guidelines issued on 11th October 2019 which are as follows:

(i) The Traffic police is directed that to ensure there shall be **one way traffic** (Srinagar-Jammu) on NHW-1A on 26th and 27th October 2019, as well as on 02nd and 03rd of November, 2019.

(ii) Directions have been issued to all concerned to ensure hassle free movement of traffic and uninterrupted movement of the employees and vehicles carrying the departmental records.

(iii) SSP Traffic City Srinagar/SSP Traffic Rural Kashmir directed to ensure that vehicles travel in convoy shape.

(iv) Dy.SP Traffic at different points were directed to accompany the convoy from point to point.

(v) SSP Traffic at different points directed to monitor the movement of vehicles carrying the employees and departmental records and to intimate early movement to IGP Traffic, J&K.

(vi) SSP Traffic was directed to ensure **“no civilian/non-civilian vehicles interrupts or sabotages the convoy enroute and at the places of halt”**

(vii) SSPs and SP Traffic were directed to liaise with other sister agencies involved in the safe passage of employees/convoy.

(viii) SSP Traffic, Rural Kashmir was directed to stop all trucks towards Jammu at TCP Qazigund till Darbar Move Convoy passes through and after Darbar Move convoy passes TCP Qazigund, the trucks be allowed after 01 hour, to proceed towards Jammu.

(ix) Deployment of sufficient number of traffic officers/officials in the area of responsibility to ensure smooth flow of Darbar Move vehicles.

(x) Constitute of joint squad by SSP Traffic Srinagar to ensure that no overcharging take place.

(xi) Deployment of **“sufficient number of recovery vans, mobile workshop on the route and also making available of excavators, dozers, men and other equipments on all the vulnerable land slide prone areas for timely**

evaluation of debris etc for uninterrupted traffic movement on the pattern of QRT placed during SANJY-2019”.

(xii) Directions were issued to the SSP Traffic, Rural Kashmir to coordinate with GREF Engineers as well as Mechanical Division officials to keep men, machinery and material available for timely clearance of snow from road in the area of Jawahar Tunnel and Qazigund areas for smooth movement of Darbar Move convoy.

Report of security arrangements for convoy movement

7. In response to directions made by us in Para 42(ix) of our order dated 10th April 2020, we have received a report dated 15th April 2020 in sealed cover which has been placed by Mr. Laeeq Ahmad, CPO for IGP, Security, J&K. We have been requested to keep the information in this regard confidential.

8. The sealed envelope has been opened by us and perused. The IGP Security, J&K has elaborately detailed the security arrangements which were effected for the Darbar Move giving point-wise details of the deployments which were effected.

9. Given the nature of the information which has been furnished, we are of the view that this report deserves to be kept confidential. In view of the above, the original report shall be resealed and returned to the office of the IGP (Security), J&K.

10. However, we note that we are informed by IGP (Security), J&K that surveillance and security for the Darbar Move are given from the point of loading of the records, en-route National Highway up-to destination by

deploying Police/CAPF nafri for ROP, meticulous Anti-sabotage Checks to ensure proper area domination for secured moment of Darbar Move Convoy. Additionally, Zonal Police deploys the Police Convoy Commander (SP rank) assisted by DSP and others & CAPF, escort the convoy all along NHW within their respective territorial jurisdiction.

11. Before loading, anti-sabotage check of official records and vehicles is conducted. The vehicles are parked in the Civil Secretariat for night halt before moving in Convoy are secured. Senior level officers escort the Convoy up to the destination. Before downloading the records at destination of the Dabar, anti-sabotage checking of the Civil Secretariat, other offices and records is also undertaken.

Status and locations of records as sought by our order dated 16th April 2020 in Para 16(ix)

12. It is submitted by Mr. Amit Gupta, learned AAG that he has filed additional report of the General Administration Department stating that *“in view of the above Government Order, all records of the Union Territory of Jammu and Kashmir are presently lying at Jammu office and have not been shifted”*.

This report is not before us. Let another copy of the same be furnished.

13. Ms. Monika Kohli has submitted that as per the report dated 25th December 2018 which appeared in the English daily **‘Kashmir Monitors’**, the Government of India had advanced sum of Rs. 20 crores for the purposes of digitisation of the record.

14. The above report highlights the fact that no digitisation of the administrative records has been effected and the Government of the Union Territory is relying completely on paper files only. Since the Darbar Move in October 2019, the entire record relating to the entire Union Territory of Jammu and Kashmir is in Jammu.

Issue under consideration

15. Mr. Amit Gupta, AAG has submitted that in view of recent hike in the number of COVID-19 cases and the need for effective control of the same, the Annual Darbar Move arrangements have been reviewed. Mr. Gupta submits that the Government has observed that the formal opening of the Darbar on 4th May 2020 as ordered vide Government Order dated 10th April 2020 may effect COVID-19 control efforts in the Union Territory. The said order has therefore been partially modified by an order dated 17th April 2020. The formal opening of the Darbar at Srinagar has been directed to take place on 15th June 2020.

16. We are informed that this order has been placed with the Report dated 20th April 2020 of the General Administration Department.

17. The order dated 17th April 2020 manifests that the concerns observed by us in the order dated 10th April 2020 were justified.

18. The other issues which have been noted therein certainly require consideration on which Mr. Faisal Qadri has made submissions which were noted in the previous orders.

19. We are informed by Ms. Monika Kohli, learned Amicus Curiae that in the year 1872 the then Maharaja Ranbir Singh shifted the Darbar from

Srinagar to Jammu as an arrangement for the winter months which arrangement has continued over the years. There has been no examination of the efficiency or utility of this arrangement which was commenced only on account of weather reasons.

20. Ms. Kohli has drawn our attention to the disclosure of the huge financial outlay, the manpower and enterprise involved.

21. Ms. Monika Kohli has suggested that ideally, both the Secretariats are required to be running functional in both the places around the year.

22. We have heard the submissions on the issue under consideration, as noted in our order dated 10th April 2020.

We reserve our orders thereon.

EMG-CM No.5/2020 in WP(C)PIL No. 4/2020

23. Notice in this application.

24. Mr. B. A. Dar, Sr. AAG accepts notice.

25. This application has been filed by Ms. Ashia Bano, wife of Mr. Mian Abdul Qayoom, resident of Srinagar, who has been in preventive detention since 5th August 2019 under the provisions of the Jammu and Kashmir Public Safety Act, 1978 and is presently lodged in Jail No. 3, Central Jail, Tihar Delhi. The applicant has stated that her husband-the detenu is suffering from multiple ailments detailed in para 3 of the application. It is contended that he is in an extremely fragile state of health.

26. Additionally, Mr. Z. A. Qureshi, learned senior counsel has emphasized the threat of COVID-19 infection in the Jail submitting that the jail inmates are subjected to exposure from the jail staff who do not reside within the jail premises but come from their residences outside the jail and that there is every possibility of their bringing infection into the jail.

27. Mr. Quereshi submits that apart from Mr. Qayoom's ill health, he has been in detention over the entire winter and as such Mr. Qayoom has only got winter clothing with him. It is submitted that temperatures in Delhi are over 40 degrees centigrade already and lack of summer clothing would be causing extreme distress to the already ailing detenu. Mr. Quereshi submits that given the lockdown situation, it is difficult for the family members to reach the belongings of Mr. Qayoom to him.

28. Mr. Quereshi would submit that the holy month of Ramadan is to commence from 24th April 2020 which requires certain essential discipline to be followed by all Muslims. The submission is that Mr. Qayoom would not be able to discharge his religious obligations in the Tihar Jail.

29. It is further submitted that Mr. Qayoom and the applicant have been blessed with four daughters and do not have a son. All the daughters are stated to be married. As such, the applicant who is stated to be 68 years of age, and also suffering from several life threatening diseases, has been compelled to reside alone. In the current lockdown situation, she is finding extremely difficult to fend for herself.

30. Mr. Quereshi has relied upon the provisions of Section 19 of the Public Safety Act, 1978 which enables the Government to revoke a detention

order and Section 20 which enables temporary release of the person detained. The submission is that the facts of the case brought on record by the applicant merits that the government take a view.

31. An oral submission is made before us that the detenu owns the property bearing No. A-48B, Abul Fazal Enclave, Dhoker No.6, Shaheen Bagh, New Delhi. An alternative prayer is requested that if the respondents have objection to the grant of the prayer made in the application, the respondents may consider the possibility of shifting the detention of Mr. Mian Abdul Qayoom from Tihar Jail to the detenu's above property so that he could discharge his religious obligations and also look after his wife, the present applicant.

This aspect of the matter is required to be considered by the respondents.

This may be considered by the respondents who may take a view thereon.

32. Mr. B. A. Dar, Sr. AAG who appears for the respondents prays for a short adjournment to examine the aforesaid submissions and file a reply. The same shall be positively filed within four days from today.

33. Given the apprehensions expressed by the applicant and Mr. Quereshi with regard to the medical status and the health of the detenu, Mr. Mian Abdul Qayoom who is lodged in Jail No.3, Central Jail, Tihar Delhi and the apprehension expressed with regard to difficulties which may be faced by him to discharge his religious obligations during the holy month of Ramadan in the Tihar Jail, we direct as follows:

- (i) The respondents shall file a reply within four days from today.
- (ii) The respondents shall inform this court of the medical status of the detenu.
- (iii) Liberty is given to the applicant to hand over the summer clothing of the detenu Mr. Mian Abdul Qayoom to the IGP, Kashmir for having the same delivered to the detenu in the Jail No. 3, Central Jail Tihar, Delhi.
- (iv) We direct the Superintendent, Jail No.3, Central Jail, Tihar, Delhi to appear before us on video-conferencing on the next date of hearing.
- (v) Mr. Mian Abdul Qayoom shall be produced by the Superintendent, Jail No.3, Central Jail, Tihar, Delhi on video-conferencing before us to enable us to ascertain the status of his health on the next date of hearing.

List this application on 27th April 2020.

34. Copy of this order be sent on e-mail to all the counsels by e-mail.

(RAJNESH OSWAL)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Jammu
22.04.2020
Raj Kumar