# SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

**PRESENT:**

Raja Saeed Akram Khan, C.J.
Kh. Muhammad Nasim, J.
Raza Ali Khan, J.

**CIVIL PLA NO.744 AND 436 OF 2024**

(For leave to appeal against the judgment of the High Court dated 18.11.2024 in writ petition No.2873 and 2872 of 2024)

Ehsan ul Haq & others
(In C.P. No.744)

The AJ&K Bar Council
(In C.P. No.748)

…. Petitioner(s)

VERSUS

Azad Govt. & others
(In both the petitions)

…. Respondent(s)

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For the petitioners: Raja Sajjad Ahmed Khan and Raja Amjad Ali Khan, Advocates.

For the respondents: Sheikh Masood Iqbal, Advocate General.

Date of hearing: 03.12.2024

## ORDER

**Raja Saeed Akram Khan, C.J.-** The matter in dispute pertains to the *Peaceful Assembly and Public Order Ordinance, 2024,* which has been challenged by the petitioners through two writ petitions filed before the High Court. The writ petitions were dismissed in limine through the impugned judgment, prompting the petitioners to file present petitions for leave to appeal.

2. Raja Sajjad Ahmed Khan, Advocate, learned counsel for the petitioners (Ehsan ul Haq & others), contended that the impugned judgment has been rendered without affording the petitioners an opportunity of hearing. He highlighted various provisions of the Ordinance, arguing that it infringes upon the constitutionally guaranteed fundamental rights of life, liberty, assembly, movement, association and speech. He added that no doubt the legislature is competent to make laws within the sphere allocated to it, but at the same time powers of legislature have been restricted by Article 4(1) & (2) from making any law which takes away or abridges the fundamental rights. He further emphasized the role of judicial review, asserting that the Courts possess the authority to examine and strike down legislation inconsistent with the Constitution. He also argued that through the impugned Ordinance the judicial powers of review have been assigned to the executive, in contravention of the constitutional principles. He further submitted that admittedly legislature has powers to impose reasonable restrictions for exercising fundamental rights but these restrictions cannot override the Constitution and other prevailing laws. The learned High Court failed to address these crucial points in its judgment. In support of his contentions, learned counsel relied on the precedents reported in *2014 SCR 43*, *PLD 1983 SCAJK 95*, *PLD 1965 Lahore 42*, *PLD 1964 SC 673*, and *PLD 2011 Karachi 99*.

3. Raja Amjad Ali Khan, Advocate, adopted the arguments of Raja Sajjad Ahmed Khan. Additionally, he narrated the events and circumstances which occurred

during the course of hearing before the High Court. He added that the remarks made by the Hon'ble Chief Justice amount to maligning the Supreme Court, warranting an inquiry to be conducted into the matter. The manner in which the remarks have been made is against the code of conduct of judges. He added that the High Court failed to take into consideration that the impugned legislation amounts to abrogation of the Constitution. No legislation can be made in Azad Jammu and Kashmir in conflict with the Universal Declaration of Human Rights, but these aspects have been overlooked by the High Court while passing the impugned judgment.

4. The learned Advocate General contended that the fundamental rights guaranteed under the Constitution are subject to reasonable restrictions. He argued that the regulation of peaceful assemblies was imperative to safeguard the rights of other citizens, protect public and private property, and ensure that the daily lives of individuals are not disrupted. Furthermore, such regulation is necessary to allow public functionaries to perform their duties without undue hindrance. To achieve these objectives, the impugned Ordinance was promulgated, which, according to him, is entirely in accordance with the law.

After careful consideration of the arguments advanced, this Court is of the view that the propositions raised in this case involve substantial questions of public importance, requiring detailed deliberation. Therefore, leave to appeal is granted, subject to the condition that the petitioner(s) deposit a security amount of Rs.

1,000/- in each petition within one month. Failure to comply with this condition will result in the automatic rescission of this leave-granting order.

As the petitioners have made out a prima facie arguable case, the operation of the impugned Ordinance shall remain in abeyance until the disposal of the appeals. The office is directed to proceed further in accordance with the rules.

CHIEF JUSTICE JUDGE JUDGE

Muzaffarabad,
03.12.2024