

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.1316/2020.

Shohada Foundation of Pakistan through its Trustee

versus

Federation through Secretary, M/o Religious Affairs, Government of Pakistan,
Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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02.	04.06.2020	Hafiz Ehtisham Ahmed, trustee/petitioner in person.
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Through this writ petition, the petitioner has called in question the decision of Federal Government/respondents No. 1 to 5 conveyed through notification dated 11.05.2020, whereby the National Commission for Minorities (NCM) was reconstituted and the Quadianis were not given representation in the said commission.

2. The petitioner/trustee has been confronted regarding maintainability of instant writ petition, whereby he has heavily relied upon trust deed appended with the writ petition, through which Shohada Foundation of Pakistan i.e. the petitioner Foundation has been constituted and contends that Shohada Foundation of Pakistan is juristic person, who under objectives of the trust is representing innocent people killed in silent operation like Lal Masjid and Jamia Hafsa and all those who have lost their lives in such operations as well as murdered in drone attacks; that the petitioner stands besides the oppressed and renders legal services to distress persons, who seek justice and ensure fundamental rights guaranteed under Constitution of Pakistan as such they can claim to be custodian of deprived

section of the society; that question of *locus standi* cannot be raised when the issue relates to fundamental rights and any individual can raise such like issue before the Court of law; that Federal Government earlier issued notification and agreed to give representation to Qadianis being non-Muslim in the National Commission for Minorities but later on the Federal Government withdrew its commitment and deprived the Qadianis of their legitimate right to be represented in the National Commission for Minorities through subsequent notification.

3. The petitioner has been confronted as to whether Shohada Foundation of Pakistan Trust through petitioner can represent Qadianis or Jamat-e-Ahmadiyya, Hafiz Ehtisham Ahmad i.e. representative of the petitioner Foundation (in-person) contends that petitioner is seeking right of Qadianis being non-Muslim to be given equal representation in all spheres of life. He heavily relied upon statement of Jamat-e-Ahmadiyya, (BBC Urdu.com Lahore dated 11.05.2020) whereby the spokesman Salim-ud-Din's point of view was highlighted. The same is reproduced as under:-

"احمدی برادری کا موقف"

یہ معاملہ اس وقت زیر بحث آیا جب مقامی ذرائع ابلاغ میں یہ خبریں سامنے آئیں کہ حکومت کی جانب سے احمدی برادری کو اقلیتی کمیشن میں شامل نہیں کیا گیا ہے۔

اس معاملے پر پی بی سی سے بات کرتے ہوئے پاکستان میں جماعت احمدیہ کے ترجمان سلیم الدین کا کہنا تھا کہ ہم نے کمیشن میں شامل ہونے کی درخواست نہیں کی تھی اور اس معاملے پر نہ ہی حکومت کی جانب سے ہم سے رابطہ کیا گیا۔

اقلیتی کمیشن میں شامل نہ کیے جانے پر وہ کہتے ہیں ہماری کوئی مرضی تھی نہ ہمیں اس کا افسوس ہے۔"

4. Arguments heard, record perused.

5. I have gone through the entire case as well as the record appended with this writ petition and there is no denial to the proposition that any individual can raise question of public importance, especially when fundamental rights have been infringed or where any deprived segment of the society is not able to represent itself. Reliance is placed upon 2012 SCMR 455 (Dr. Akhtar Hassan Khan vs. Federation of Pakistan), but the fact remains the same that Ahmadis and Qadianis are non-Muslim and Islam is state religion of Pakistan in terms of Article 2 of the Constitution. Whereas, Article 260 of the Constitution of the Islamic Republic of Pakistan, 1973 defines non-Muslims as under:

“Non-Muslim” means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the Lahori Group who call themselves ‘Ahmadis’ or by any other name or a Bahai, and a person belonging to any of the Scheduled Castes.”

On the other hand, all Muslims believe the prophethood of Muhammad (PBUH) as the last one and that there is no prophet after him, and as such, the definition of Muslims has specifically been incorporated in Article 260(3)(a) of the Constitution in the following manner:

“Muslim means a person who believes in the unity and oneness of Almighty Allah, in the absolute and unqualified finality of the Prophethood of Muhammad (peace be upon him), the last of the prophets, and does not believe in, or recognize as a prophet or religious reformer, any person who claimed or claims to be a prophet, in any sense of the word or of any description whatsoever, after Muhammad (peace be upon him).”

The above referred definition clearly establishes that he who does not fall within the said definition is a non-Muslim and any

person who does not believe in the oneness of Almighty Allah, in absolute and unqualified finality of Prophethood of Muhammad (PBUH) as the last prophet is a non-Muslim, whereas this aspect is the key foundation of religion of Islam and same is integral part of our Constitution. In terms of Article 20 of the Constitution, every citizen has right to profess, protect and propagate his religion subject to law, public order and morality. The Constitution also provides safeguard against discrimination on the basis of any religion including the protection of rights to the minorities.

6. The question of *locus standi* in such type of cases is to be considered as foundation of the *lis*. The record clarifies that Shohada Foundation of Pakistan was established by trust deed dated 10.07.2013 with following objectives:-

(a) *To struggle for imparting justice to the innocent people killed in 'Silence Operation' (Shohada-e-Lal Masjid and Jamia Hafsa hereinafter called as 'SLMJH') and all those whoever lost their lives in any such operation as well as murdered by drone attacks or however and wherever killed without due process of law in Pakistan while carrying out acts and deeds for the cause of Islam and the sovereignty of Pakistan.*

(b) *To provide free legal aid to the legal heirs of Shohada (deceased) and file and contest their cases in all the courts of law for the redress of their grievances including the cases to be registered against the persons responsible of murder."*

7. Whereas, the Board of Trustees referred in clause-4 discloses seven (07) trustees including Hafiz Ihtesham Ahmad (present petitioner), Muhammad Tariq Asad (counsel for the petitioner), Umme Hasaan, Principal Jamia Hafsa, Humaira Rashid widow of Ghazi Abdul Rashid, Haroon Rashid son of Ghazi Abdul Rashid, who claim to be affectees of Lal Masjid

incident and as such they represent specific cause in terms of their objective, which is limited to the extent of affectees of Lal Masjid only. However, in this case Jamat-e-Ahmadiyya Pakistan has been impleaded as respondent No.6 and the point of view given in press through their spokesman Salim ud Din of Jamat-e-Ahmadiyya, has been reproduced in Paragraph 3 above that *“Quadianis themselves have not agitated any of the matter for non inclusion in the National Commission for Minorities nor they are aggrieved with such administrative action of Federal Government”*. As such, the stance taken by the petitioner qua notification, dated 11.05.2020, whereby Quadianis have been excluded from their representation in the National Commission for Minorities has no legs to stand because when the Quadianis themselves are not agitating for any of their rights, then petitioner cannot be permitted to jump into the shoes of that non-Muslim Jamat. Hence, by any stretch of imagination the petitioner Foundation is neither aggrieved party in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 nor has any *locus standi* to file the instant writ petition.

8. In this backdrop, Shohada Foundation of Pakistan has no *locus standi* or authority to represent Jamat-e-Ahmadiyya or Quadianis before any forum or authority as it will affect the rights of those minorities, who themselves are vigilant enough to tackle their issues, beside this aspect the National Commission for Minorities was notified by Federal Government to represent minorities, however no law has been quoted by the petitioner to justify that all minorities will be given separate or equal representation in the said Commission, even the very constitution

of the commission is based upon the judgment of the Hon'ble Supreme Court reported as PLD 2014 SC 699 (Suo Moto Action regarding Suicide Bomb Attack of 22.09.2013 on Church in Peshawar regarding threats given to Chilas Tribe and Ismaeli in Chitral), hence, it is the matter of policy and essentially an administrative matter falling within the exclusive domain and policy decision making of the Government, interference in such matters by the Courts was not warranted. Reliance is placed upon 2016 SCMR 1021 Government of Khyber Pakhtunkhwa vs. Hayat Hussain, etc., 2011 SCMR 1743 (Suo Moto Case No.25/2009 - Cutting of Trees for Canal Widening Project), 2018 SCMR 211 (NESPAK (Pvt.) Ltd. vs. Kamil Khan Mumtaz), 2017 SCMR 206 (Shahid Pervaiz vs. Ijaz Ahmad, etc.), PLD 2015 SC 6 (Ghulam Rasool v. Government of Pakistan), PLD 2014 SC 1 (Dossani Travels (Pvt.) Ltd. Travels Shop (Pvt.) Ltd.), PLD 2006 SC 697 (Wattan Party through President vs. Federation of Pakistan) and 2014 SCMR 220 (OGRA through Secretary vs. Midway II, CNG Station). It has not been denied that there are number of minorities in Pakistan, who have been given due representation under the law and their rights have been given protection in the Constitution in best possible manner and same is the case with the Quadianis, who are declared *non-Muslim* and declared *Minority* in Pakistan under the Constitution of the Islamic Republic of Pakistan, 1973, therefore, no one is allowed to re-enter into such question under any circumstance as the status of Quadianis being non-Muslim has attained finality, which could not be interfered with by any mean.

9. The petitioner has invoked the jurisdiction of this Court, whereby it has indirectly presented the case of respondent No.6 (Jamat-e-Ahmadiyya, Pakistan), which is not permissible as Quadianis are declared non-Muslims being minority. The question of minorities status in the National Commission for Minorities is a policy matter which falls within the exclusive domain of Federal Government, as such, the Federal Government has an authority to consider, which of the minorities have to be notified in the National Commission for Minorities as all the minorities are equal in the Constitutional framework, hence, the petitioner is not an aggrieved person, nor having any *locus standi*, therefore, the instant writ petition is not maintainable, hence, the same is hereby **DISMISSED** *in limine*.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam