

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.309/2017

Pakistan United Christian Movement (PUCM) & another

versus

FOP through Secretary, Ministry of Law & Parliamentary Affairs & 6 others

Petitioners by: Mr. Muhammad Majid Bashir, Advocate.

Respondents by: Barrister Muhammad Mumtaz Ali, AAG.
Muhammad Akram, Inspector, ETO, Islamabad.

Date of Hearing: 16.01.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioners seek direction to be issued to respondent authorities/ministries to impose a complete ban on sale, purchase and consumption of liquor under the name of religion as per the proposal of the Islamic Ideology Council and accordingly, Article 37 of the Constitution of the Islamic Republic of Pakistan, 1973 may be amended.

2. Brief facts referred in the instant writ petition are that the Islamic Ideology Council in Pakistan has banned the consumption of alcohol/liquor amongst Muslims, whereas Non-Muslims, including the Christians, and foreigners of 21 years of age or above are being issued permits to purchase/consume alcohol, while the Pakistan United Christian Movement (*hereinafter referred to as "petitioner"*) being the representative of the Christian community in Pakistan highlighted that consumption of alcohol is totally prohibited in all the religions practiced in the world, including Christianity, because as maintained by the Gospel of Luke and Mathews, consumption of wine is considered as sinful, but the respondents authorities are being issuing permits to non-Muslims with respect to purchase/consumption of wine. Hence, the instant writ petition.

3. Learned counsel for petitioners contended that increase use of wine/liquor in Pakistan is a clear violation of moral duties, religious principles and constitutional laws; that since Churches all over the world and biblical texts

prohibit the consumption of liquor for being sinful, issuance of its permit to sell/purchase is illegal and against the religious views of Christianity; that the Islamic Ideology Council had already proposed a ban on sale, purchase and consumption, but till date it has not been policed yet, therefore, the respondent authorities may be directed to strictly prohibit the sale, purchase and consumption of liquor in the name of Christians and other Non-Muslims by imposing complete ban.

4. Conversely, learned Additional Attorney General opposed the instant writ petition on the ground that the same is competent and not maintainable as the petitioners have wrongly invoked the jurisdiction of this Hon'ble Court; that the petitioners have distorted the facts and suppressed the material facts for malicious gain giving raise to disputed questions of facts and the same could not be resolved by this Hon'ble Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973; that the permit with respect to sale, purchase and consumption of alcohol/liquor is issued under Prohibition Order, 1979 after fulfillment of all the formalities required under the law, therefore, the instant writ petition has no force and the same may kindly be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that the Pakistan United Christian Movement i.e. the petitioner has raised the question of public importance and prayed for issuance of direction to prohibit the sale, purchase and consumption of liquor in the name of Christians and other Non-Muslim communities mainly on the ground that the use of liquor is strictly prohibited in Christians scriptures/community. The relevant grounds raised by the petitioner in Para-3 of the instant writ petition are as under:

"The prohibitionist position has experienced a general reduction of support since the days of prohibitionism as a movement, with many of its advocates becoming abstentionists instead. Groups adopting prohibitionist positions include the Southern Baptist Convention and Seventh-day Adventists The former group resolved that their "churches be urged to give their full moral support to the prohibition cause, and to

give a more liberal financial support to dry organizations which stand for the united action of our people against the liquor traffic." Charles Spurgeon said: "I wish the man who made the law to open them had to keep all the families that they have brought to ruin. Beer shops are the enemies of the home; therefore, the sooner their licenses are taken away, the better." The founder of the Salvation Army William Booth was a prohibitionist, and saw alcohol as evil in itself and not safe for anyone to drink in moderation. In 1990, the Salvation Army re-affirms: "It would be inconsistent for any Salvationist to drink while at the same time seeking to help others to give it up." The Assembly of God: "a little alcohol is too much since drinking in moderation provides Satan an opening to cruel deception." David Wilkerson founder of Teen Challenge said similar things. Billy Sunday: "After all is said that can be said on the liquor traffic, its influence is degrading on the individual, the family, politics and business and upon everything that you touch in this old world."

Prohibitionists such as Stephen Reynolds and Jack Van Impe hold that the Bible forbids partaking of alcohol altogether, with some arguing that the alleged medicinal use of wine in 1 Timothy 5:23 is a reference to unfermented grape juice. They argue that the words for alcoholic beverages in the Bible can also refer to non-alcoholic versions such as unfermented grape juice, and for this reason the context must determine which meaning is required. In passages where the beverages are viewed negatively, prohibitionists understand them to mean the alcoholic drinks, and where they are viewed positively, they understand them to mean non-alcoholic drinks. Prohibitionists also accuse most Bible translators of exhibiting a bias in favor of alcohol that obscures the meaning of the original texts.

The Church of Jesus Christ of Latter-day Saints, the largest body of the Latter Day Saint movement, also teaches that "God has spoken against the use of alcohol. They base this teaching on the Word of Wisdom, a section in Doctrine and Covenants which is part of the Mormon Canon, that recommends against the ordinary use of alcohol, though it makes an exception for the use of wine in the sacrament, a similar rite to the Eucharist. However, the church now uses water instead of wine in the sacrament, and since 1851, the Word of Wisdom's advice for wise living has been considered "a binding commandment on all Church members."

The license issued by the Government of Pakistan for consumption of liquor is based upon the religious authority as reflected from Islamabad Capital Territory Prohibition (Enforcement of Hadd) Rules, 1981, wherein Section 2(d) deals with license, which is reproduced as under:

"(d) "license" includes a pass or permit granted under these rules or under the Punjab Excise Act (Act I of 1914) or under any rules, notifications or orders made thereunder"

Therefore, any person who is license holder granted under the said Rules is authorized to use and consume the liquor, however in order to understand liquor permits, the relevant provision referred in the said Rules is as under:

12. *The following liquor permits shall be granted in the form by the authority and to the persons specified below and shall be treated as license under Article 17 of the Order of the purpose specified as under the subject to the conditions as prescribed by the Excise Commissioner:--*

<i>Form of permit</i>	<i>Authority competent to Grant</i>	<i>Renew</i>	<i>To whom Granted</i>	<i>Purpose</i>
PR.I	Prohibition Officer	Not renewable	Non-muslim citizen of Pakistan not below the age of 21 years.	For purchase, possession, transport or consumption of such quantity of intoxicating liquor at or about the ceremony prescribed by his religion not exceeding at a time that specified in the permit.
PR.II	Prohibition Officer provided that the resident Inspector posted to the Institution may be treated a Prohibition Officer for the grant of such permit in favour of foreigners and tourists staying in that institution.	Not renewable	Non-muslim foreigner holding a valid passport.	For purchase, possession, transport of intoxicating liquor not exceeding at a time that specified in the permit for his personal consumption at his residence or a hotel room in his occupation.

7. While considering the above referred Rules, this Court has called the report from the Deputy Commissioner, Islamabad and Director Excise and Taxation, ICT, who have provided a complete list, which includes 4933 permit holders and majority of them are Christians by faith, who have been granted liquor permits. The list has been filed by the respondent authorities in Court and same is available on record.

8. I have also called comments from the Ministry of Religious Affairs and Inter-faith Harmony, Government of Pakistan, who avoided the interpretation of this aspect in their para-wise comments, whereas Ministry of Law and Justice agreed to process necessary legislation for amendment in the Constitution of the Islamic Republic of Pakistan, 1973 regarding imposition of complete ban on the initiative of concerned Ministry subject to condition that if all religious

communities unanimously agree for criminalization of consumption of alcoholic liquor.

9. Besides the above referred position, the learned AAG in attendance has heavily relied upon Article 37(h) of the Constitution of the Islamic Republic of Pakistan, 1973, which is referred as under:

Article 37: The State shall---

(h) Prevent the Consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purpose;"

10. The learned counsel for petitioner when confronted with the position referred in Article 37(h) of the Constitution of the Islamic Republic of Pakistan, 1973 has drawn attention of this Court towards the principles of policy referred in Article 29 of the Constitution, which refers as under:

29. (1) *The Principles set out in this Chapter shall be known as the Principles of Policy, and it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority.*

(2) *In so far the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the Principle shall be regarded as being subject to the availability of resources.*

11. The learned counsel for petitioner has further relied upon PLD 1993 Karahi 83 (Shahab Matloob v. Government of Sindh), wherein it has been held that:

"Principles of Policy --- Applicability --- Mode of enforcement --- Extent --- Provision of Art.37(c) of the Constitution provides that state would make technical and professional education generally available and higher education equally accessible to all on basis of merit --- Validity of an action or a law although could not be called in question, on the ground that same was not in accordance with the Principles of Policy, and no action would file against the State, any organ or Authority of the State or any person on such ground, yet each organ and Authority of the State, and each person performing functions on behalf of an organ or Authority of the State was required to act in accordance with the "Principles of Policy" in so far as they related to the functions of organ or the Authority --- Principles of Policy enshrined in the Constitution can always be called in aid for the purpose of interpretation of any legal

provision or instrument--- Any interpretation which seeks to comply or advance Principles of Policy should always be adopted as against an interpretation which goes against such principles."

Similarly, in another reported judgment PLD 1990 Karahi 342 (Ms. Farhat Jalil vs. Province of Sindh), it has been held that:

"There is no bar to the superior judiciary in the 'performance of its functions and duties and in exercise of its jurisdiction and powers to act or to declare law in accordance with those principles. To put it differently, the judiciary like other organs and authorities is immune from attack qua its actions and declaration of law on any ground relatable to principles of policy. If it takes any action or declares any law in accordance therewith, there is nothing in this Article to prevent it from doing so. This discussion on the bars relating to the enforcement of, or actions in accordance with, the principles of policy leads to an irresistible conclusion that qua the judiciary (though it cannot direct other organs of the state to act in accordance with the principles of policy) there is nothing to prevent itself from acting on those principles subject of course to some other constitutional limitations and important compulsions qua the statute law which would be spelt out separately."

12. Conversely, the learned AAG raised serious objection qua maintainability of instant writ petition on the strength of Article 30(2) of the Constitution of the Islamic Republic of Pakistan, 1973, which refers as under:

30. (2) *The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the State, any organ or authority of the State or any person on such ground."*

The learned AAG further contends that such type of question could not be settled in constitutional jurisdiction of this Court and has relied upon 2015 SCMR 1739 (Lahore Development Authority vs. Ms. Imrana Tiwana), wherein it has been held that:

"32. This does not, however, mean that the Principles of Policy, the Objectives Resolution, and Article 2A either on their own or when read together can be used to strike down laws. All that it means is that these Articles can be used to understand and interpret the chapter on Fundamental Rights in its proper context. This may facilitate an interpretation of Fundamental Rights in harmony with and not divorced from their constitutional setting. The object of this approach is to harmoniously construe the various provisions of the Constitution in a holistic manner. This approach does not deviate from the view taken by

the Court that the Objectives Resolution, Article 2A and the Principles of Policy cannot provide a criterion to test the validity of statutes and to strike them down."

13. Besides the above referred position, the issue could only be resolved by way of deliberation and recommendations of the relevant constitutional wisdom laid down in Article 228 of the Constitution of the Islamic Republic of Pakistan, 1973, whereby Islamic Ideology Council has been established with the powers to perform functions in terms of Article 230 of the Constitution, whereby they can make recommendations to the Parliament/Provincial Assemblies as to the measures for bringing the existing laws into conformity with injunctions of Islam and the stage by which such measures are to be brought into effect. Even otherwise, Article 25 of the Constitution laid down equal protection of law and considers all citizen equal before the law, such principle is equally applicable to non-Muslim citizens of Pakistan, who have also been given assurance in terms of Article 36 of the Constitution of the Islamic Republic of Pakistan, 1973, whereby the State shall safeguard the legitimate rights and interest of minorities in all respects. Furthermore, while considering the mandate of Article 38 of the Constitution, it is the duty of State for promotion of social and economic wellbeing of Pakistan in every respect. It is the State's obligation to settle the question of public importance, especially when the petitioner has referred the consumption of alcohol as totally prohibited in all religions practiced in the world.

14. In view of above background, the instant writ petition stands **DISPOSED OF** with direction to the Federal Government to consider the recommendations of Islamic Ideology Council, whereby complete ban was suggested on sale/purchase of liquor and the Islamabad Capital Territory Prohibition (Enforcement of Hadd) Rules, 1981 requires necessary amendment in the schedule whereby liquor was permitted on prescribed ceremony defined in any religion. Such phrase is against the dignity of the Christian community,

therefore, all the concerned ministries, including the Federal Government, shall come up with solution by inviting all the stakeholders on the parliamentary platform for the amendment of constitutional provision and other laws, if so desired. However it is expected from the Federal Government to initiate such process before relevant authorities and forums at the earliest.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 06 February, 2020.

JUDGE

Khalid Z.