

IN THE SUPREME COURT OF PAKISTAN

(Shariat Appellate Jurisdiction)

Present:

Mr. Justice Mushir Alam

Mr. Justice Sardar Tariq Masood

Mr. Justice Dr. Muhammad Khalid Masud

Civil Shariat Appeal No.1 of 2013

Against the judgment dated 22.10.2012
passed by Federal Shariat Court in Sh.
Mis. Application No.06/1 of 2011

Govt. of Punjab thr. Chief Secretary

Appellant(s)

VERSUS

Dr. Zahoor Ahmad Azhar

Respondent(s)

For the Appellant(s):

Barrister Qasim Chohan, Addl. AG. Pb.

For the Respondent(s):

N.R

Date of Hearing:

19.09.2018

JUDGMENT

CMA No. 8415-L of 2013

Mushir Alam, Chairman.- For the reasons mentioned in this miscellaneous application the same is allowed and the delay in filing of Civil Shariat Appeal is condoned. Disposed of.

Civil Shariat Appeal No.1 of 2013

Appellant, Government of Punjab, have challenged the judgment dated 22.10.2012 rendered by the learned Federal Shariat Court whereby directions to implement Article 31 (2)(c) of the Constitution of Pakistan, 1973 and Shariat Act, 1991 were issued.

2. Briefly stating facts appears to be that Dr. Zahoor Ahmed Azhar, Respondent herein, through letter dated 14.12.2010 addressed to the Chief Justice, Federal Shariat Court sought intervention in the

matter of introduction of Arabic language in all walks of life and for issuance of necessary direction to the Federal Government to make Arabic language as a part of curriculum from primary to secondary school in following terms:

اس آئینہ میں نی اور وٹا نو فی تہ اوریر کی حلافت ورر ریوں کا نوٹس لیا جائے۔
 ربر ندر کیا جلاکھ عر بی پاکر بٹال ت کھو پالعد یم کے علاوہ ہر عملی مریداں میں جا بر معام دیا جائے۔
 مسلمان چوں کی تھریس کے لیے کرم سے کرم پرا نمری سے اعلای رانوی در جے ر تک تلتھی یم کانس لاراور می
 انر تظام کر یا جائے۔
 کاونٹ کے لیے معدومات کھا اخص کئی سے رتیں صخاب پر مر شتمل ایک حوالہ جاتی دسر اوریر منسلک
 رہے۔

3. Letter was converted into Shariat Petition. Notices were issued to the Secretary Law and Justice, Government of Pakistan, Attorney General of Pakistan, Standing Counsel for the Federal Government, and Advocates General of all the four Provinces. Attorney General and Standing Counsels for the Federal Government chose not to appear. After hearing the Petitioner and Advocates General of all the four Provinces, and taking into consideration various reports of different committees and in consideration of facts narrated in the impugned Judgment, learned Bench, through impugned judgment directed the Federation of Pakistan to implement Article 31 (2)(c) of the Constitution of Pakistan and Shariat Act, 1991. All the four Provinces were also directed to report the compliance, operative part contained in paragraph 6 of the impugned judgment runs as follows:

"Federation of Pakistan is directed that, under Article 31(2)(a) of the Constitution of Islamic Republic of Pakistan, Shariat Act, 1991 and the facts mentioned above, necessary steps, stated to be already under way, in certain respects in this regard, as mentioned above,

be finalized early for promotion of Arabic language for the educational and other relevant systems. It should regularly be monitored in order to ensure positive progress on the same, to be submitted to the Cabinet within six months."

4. Appeal in hand under Article 203(F) of the Constitution of Islamic Republic of Pakistan, 1973 has been preferred by the Province of Punjab alone. Learned Additional Advocate General, Punjab, contended that impugned judgment cannot be sustained, Federal Shariat Court in terms of Article 203D of the Constitution of Pakistan, 1973 had no jurisdiction to issue direction for the implementation of Article 31 (2)(a) of the Constitution. Secondly, the Principle of Policy as contained in Articles 29 to 40 of the Constitution, 1973 are merely the guiding principles for the State governance, which cannot be enforced by any Court including Federal Shariat Court. And, lastly that the draft Bill *"the Teaching of Holy Quran and Arabic language, Act, 2009"* which was proposed and remained under consideration of various Ministries has never seen the light of day, and or reports of various Committees including Senate Committee cannot be made basis of issuing any direction as has been done through impugned Judgment. Respondent, though served through his counsel, chose to remain absent.

5. Heard the learned Additional Advocate General, Punjab and perused the record. Pivotal question that has engaged our attention is whether the Federal Shariat Court, under the facts and circumstances of case before us, has jurisdiction to issue any declaration and or direction of the nature as reproduced above or otherwise.

6. Unlike wholesome original jurisdiction conferred on the High Courts and Supreme Court in terms of Article 199 and Article 184 (3) of the Constitution, respectively, to examine the justiciability of action or inaction as per law on the part of any State functionary, authority, organ and or person and to issue appropriate declaration, directions, or order as the case may be, such diversity of jurisdiction is conspicuously absent from the jurisdictional armory of Federal Shariat Court, [for illustrative study one may refer to celebrate case of Saeedullah Kazmi versus Government of Pakistan (PLD 1981 SC 42)].

7. Federal Shariat Court has been instilled in our Constitution through amendment Ordinance, 1980 in the Constitution of Pakistan, 1973 in Part VII, whole new chapter 3A (Article 203A to 203J) was added, installing Federal Shariat Court and Shariat Appellate Bench in the Supreme Court. Federal Shariat Court on its own motion or on the petition of a citizen of Pakistan or the Federal or Provincial Government examine existing law and or any provision thereof is in conformity and not repugnant to Injunction of Holy Quran and Sunnah of the Holy Prophet (PBUH). Limit and extent of original jurisdiction of the Federal Shariat Court is well defined in terms of Article 203D of the Constitution of Islamic Republic of Pakistan, 1973 which reads as follow:

203D. (1) *The Court may, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.*

(1A) *Where the Court takes up the examination of any law or provision of law under clause (1) and such law*

or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List or to the Provincial Government in the case of a law with respect to a matter not enumerated [in the Federal Legislative List], a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court.

(2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision:

(a) the reasons for its holding that opinion; and

(b) the extent to which such law or provision is so repugnant;

and specify the day on which the decision shall take effect.

Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal.

(3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam: -

(a) the President in the case of a law with respect to a matter in the Federal Legislative List or the Governor in the case of a law with respect to a matter not enumerated in [said List] shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and

(b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to

have effect on the day on which the decision of the Court takes effect.

8. Article 203D, as reproduced above, clearly set down the original jurisdiction of the Federal Shariat Court, to the extent of examining the statute laws, custom or usage having force of law, including statutory rules, regulations framed thereunder on the touchstone of Injunctions of Islam and issuance of declaration in relation thereto, however Constitution, Muslim Personal Laws, fiscal law and law of procedure of any Court as mentioned in Clause (c) of Article 203B *ibid*; are kept beyond the pale of its jurisdiction. [See Dr. M. Aslam Khaki versus Syed Muhammad Hashim and 2 others (PLD 2000 Supreme Court 225)].

9. Having examined the Jurisdictional bounds of the Federal Shariat Court, we have noted that the Federal Shariat Court has issued a direction in the form of *writ of mandamus* as reproduced in paragraph 3 above, which is clearly beyond its jurisdictional authority.

10. Learned Bench of the Federal Shariat Court, fell into error, treating Article 31(2) of the Constitution, as command of the Constitution or law capable of implementation by the Federal Shariat Court. As discussed above, jurisdiction of Federal Shariat Court is confined to the extent of examining the compatibility or otherwise of law (per Article 293B (c) *ibid*) on the touchstone of Injunctions of Islam. Once a law or any provision thereof is held to be repugnant to Injunctions of Islam, by the Federal Shariat Court then it becomes the responsibility of the appropriate legislature to harmonize it in accordance with Injunctions of Islam, otherwise declaration so made by the Federal Shariat Court becomes effective on the day so specified in its decision.

11. It may be observed that Principles of Policy as embedded (Articles 29 to 40), infact are the guidelines for the State, stand alone, are not enforceable. Sub-Article (1) *ibid* on one hand places responsibility on each organ and authority of State to strive to achieve the same on the other sub Article (2) of Article 30 *ibid* insulates it against examination even by the High Courts and Supreme Court unless same are translated into command of the Constitution and or law like Article 141A, Article 10A, Article 25A, corresponding to Articles 32, 37(d) and 37 (b) & (c) respectively grafted through 18th Constitutional Amendment [For illustrative cases one may see *Mehr Zulfiqar Ali Babu versus Government of the Punjab and others (PLD 1997 Supreme Court 11)*, *President of Baluchistan High Court Bar Association versus Federation of Pakistan and others (2012 SCMR 745)* and *Hafiz Abdul Waheed versus Mrs. Asma Jehangir and another (PLD 2004 Supreme Court 219)*].

12. As discussed above original jurisdiction of the Federal Shariat Court is circumscribed by Article 203D of the Constitution, to the extent of examining any law to be in conformity with Injunctions of Islam or otherwise. Federal Shariat Court has no jurisdiction to examine or be influenced by any proposed draft legislation, Bill "*the Teaching of Holy Quran and Arabic language, Act, 2009*," which has not yet been translated into the Act of Parliament nor possess any jurisdiction in the nature of Article 199 or 184(3) of the Constitution, for the enforcement of fundamental rights or to issue order, declaration or directions to implement any command of the Constitution or law. The direction given to Federation of Pakistan and all of the four Provinces through impugned judgment to take necessary steps under Article 31 (2)(c) of the Constitution and "*Enforcement of Shariah Act, 1991*" "for

promotion of Arabic language for educational and other relevant purposes”, the jurisdiction and authority, if any, to issue such direction, may rest elsewhere but, certainly not with the Federal Shariat Court.

13. In view of foregoing discussion, impugned judgment dated 22.10.2012 is set aside, Civil Shariat Appeal stands allowed.

Chairman

Member

Member

ISLAMABAD, THE

19th of Sep., 2018

Arshed

Approved for Reporting